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BUDDY INGALSBE

Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)**

BUDDY INGALSBE,

Plaintiff,

vs.

ELLIOTT AUTO SUPPLY CO., INC. DBA
FACTORY MOTOR PARTS; and DOES 1 to
25, inclusive,

Defendant(s).

Case No.: 30-2024-01402633-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Retaliation Under Labor Code § 1102.5;
- 9) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 10) Wrongful Termination in Violation of Public Policy; and
- 11) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, BUDDY INGALSBE (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against ELLIOTT AUTO SUPPLY CO., INC. DBA FACTORY MOTOR PARTS, and DOES 1 to 25, inclusive, (collectively “FMP” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Orange because Defendants ELLIOTT AUTO SUPPLY CO., INC. DBA FACTORY MOTOR PARTS, and DOES 1 to 25, inclusive, inclusive, do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Buddy Ingalsbe is a resident of Anaheim, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11070 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant ELLIOTT AUTO SUPPLY CO., INC. DBA FACTORY MOTOR PARTS is a Minnesota corporation doing business in California and as such a citizen of California based on Plaintiff’s information and belief.

5. The “Aggrieved Employees” are all current and former non-exempt or hourly paid employees who worked for Defendants in California during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of

1 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
2 is informed and believes and thereon alleges that said defendants are legally responsible for the
3 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
4 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
5 defendants when ascertained.

6 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
7 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
8 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
9 course and scope of such agency or employment, and with the approval and ratification of each
10 of the other Defendants.

11 8. Plaintiff is informed and believes and thereon alleges that each and every one of
12 the acts and omissions alleged herein were performed by, and/or are attributable to, all
13 Defendants, each acting as agents and/or employees, and/or under the direction and control of
14 each of the other Defendants, and that said acts and failures to act were within the course and
15 scope of said agency, employment, and/or direction and control.

16 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
17 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
18 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
19 Employees in accordance with applicable California labor laws as alleged herein.

20 **GENERAL ALLEGATIONS**

21 10. Wage Order 7-2001 applies to “all persons employed in the mercantile industry
22 whether paid on a time, piece rate, commission, or other basis[.]” § 1. The Wage Order defines
23 “mercantile industry” to include: “any industry, business, or establishment operated for the
24 purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or
25 for the purpose of renting goods or commodities.” § 2(H). At all relevant times, FMP engaged
26 in wholesale sales for auto parts. Accordingly, Plaintiff and the Aggrieved Employees are
27 entitled to the protections afforded by the Wage Order.

28 11. FMP is an aftermarket parts distributor providing premium original equipment

1 and name brand automotive parts for professional service centers, dealerships, fleets, and
2 wholesale customers. There are multiple FMP locations throughout California. FMP first
3 began to employ Plaintiff on or around March 8, 2022 as a Delivery Driver (picking up and
4 delivering various parts to body shops, car dealerships, mechanics, and tire shops) at its
5 Anaheim location (2990 E La Jolla St, Anaheim, CA 92806). Plaintiff generally worked
6 Monday through Friday (often Saturdays as well) from approximately 8:30 a.m. to 5:00 p.m.
7 Plaintiff's employment ended on or around March 4, 2024.

8 12. At all relevant times, FMP issued wages to Plaintiff and all of the other
9 Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times,
10 FMP classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees
11 entitled to the protections of the Labor Code and the Wage Order. Plaintiff's latest rate of pay
12 was \$16/hour.

13 13. FMP failed to pay Plaintiff and the other Aggrieved Employees for all time
14 worked or subject to its control. This is so because FMP had a policy wherein it would
15 disproportionately round down the number of hours worked, resulting in "time shaving" and
16 further resulting in Aggrieved Employees not being paid for all hours worked. Furthermore,
17 to the extent employees such as Plaintiff and others worked through their meal periods while
18 "off the clock", and those meal periods were interrupted, they were not compensated for that
19 time, which would be akin to a minimum wage violation. "Off the clock" work also included
20 Plaintiff receiving phone calls or text message on his personal cell phone from management,
21 including his boss Kirsten Johnson, before or after his shifts to discuss scheduling and work-
22 related issues.

23 14. Due to the above "off the clock" violations, FMP failed to pay Plaintiff and the
24 Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees' actual
25 work hours, which included the "off the clock" work as described above, entitled them to
26 overtime, however, it was not company policy to keep accurate track of all hours worked and
27 to pay employees the accurate amount of overtime, especially since the "off the clock" work
28 was not factored into the equation. Furthermore, any non-discretionary incentive pay,

1 including safety bonuses, were not factored into employees' regular rate of pay for purposes of
2 deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments
3 were not factored into the correct meal and rest break premium pay per *Ferra v. Loews*
4 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

5 15. FMP failed to authorize and permit Plaintiff and the other Aggrieved
6 Employees with 10-minute rest periods for every four hours of work, or majority portion
7 thereof, throughout their employment. FMP did not completely relieve Plaintiff and others of
8 all duty during said rest periods. FMP did not pay to Plaintiff and others one additional hour
9 of pay at their regular rate of compensation for each workday that one or more statutory rest
10 periods was not provided. It was not part of the company policy for employees such as
11 Plaintiff to take at least two rest breaks per shift. Moreover, it would not have been possible
12 for employees such as Plaintiff to take such rest breaks due to being understaffed and due to a
13 heavy workload. Specifically, Plaintiff was making multiple back-to-back deliveries
14 throughout his workday, and as a result could not take timely and uninterrupted rest breaks. As
15 such, the culture as well as the policies and procedures of FMP did not lend itself to the
16 employees receiving consistent statutory rest breaks wherein they were relieved of all work
17 duties. The environment at FMP was not conducive to receiving multiple statutory rest breaks
18 under California law and timely, statutory rest breaks were not authorized or enforced.

19 16. FMP failed to provide Plaintiff and the other Aggrieved Employees the
20 requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout
21 their employment. FMP did not completely relieve Plaintiff and other employees of all duty
22 during said meal periods. FMP did not pay to Plaintiff and its hourly, non-exempt employees
23 one additional hour of pay at their regular rate of compensation for each workday that one or
24 more statutory meal periods was not provided. The hourly, non-exempt employees would
25 often not be able to receive timely meal periods before the 5th hour worked that were actually
26 uninterrupted. The latter was due to the workload and due to making multiple back-to-back
27 deliveries throughout his workday. When Plaintiff would be on his meal period, FMP
28 staff/management would interrupt Plaintiff with work instructions or requests for assistance, or

1 there would be an incoming delivery. Like the rest breaks, receiving a thirty-minute
2 uninterrupted and timely meal break was not part of the company culture and was not enforced
3 by FMP. Consequently, it was the normal practice and custom of FMP not to authorize,
4 permit, and enforce timely statutory meal periods. To the extent that FMP argues that
5 employees receive meal break premium pay for missed meal periods, that argument is
6 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
7 themselves, irrespective of whether an employee received the premium payment for a missed,
8 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
9 “section 226.7 does not give employers a lawful choice between providing either meal and rest
10 breaks or an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
11 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
12 violation; the employer has still committed a violation even if the remedy for the violation has
13 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
14 such, the work environment and culture at FMP was not conducive to receiving consistent,
15 timely, statutory meal breaks under California law. Moreover, any meal or rest break
16 premiums paid were not compensated at the weighted average regular rate, inclusive of
17 bonuses and/or incentive payments as well as overtime compensation.

18 17. FMP failed to reimburse Plaintiff and the other Aggrieved Employees for
19 business expenses they incurred in direct consequence of the discharge of their duties. FMP
20 required Plaintiff and the other Aggrieved Employees to use their own personal cell phones to
21 communicate with dispatch and management concerning work matters. FMP did not
22 reimburse Plaintiff or the other employees for their mobile phone expenses. Accordingly, FMP
23 was in violation of California Labor Code sections 2800 and 2802.

24 18. FMP failed to pay its employees all wages due to them within any time period
25 specified by California Labor Code section 204, including the minimum wages and overtime
26 as described above as well as meal/rest break premiums.

27 19. FMP did not provide Plaintiff and the other Aggrieved Employees accurate,
28 itemized wage statements. Wage statements must include all hours worked, overtime hours

1 worked, all applicable hourly rates, the correct legal name and correct address of employer
2 entity, gross wages earned, all deductions, net wages earned, reimbursement for business
3 expenses, the correct start and end of the applicable pay period, the employee ID numbers or
4 social security numbers, among other items. Labor Code § 226(a)(2). FMP issued wage
5 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
6 number of hours worked at each hourly rate because of FMP's failure to properly pay wages
7 as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). FMP's failure to maintain accurate
8 records as to the hours worked daily by employees also constitutes a violation of Labor Code
9 section 1174(d).

10 20. Finally, because FMP did not properly pay all wages earned as explained
11 herein, FMP also failed to pay final wages owed to Plaintiff and the other Aggrieved
12 Employees in violation of Labor Code section 203. These earned but unpaid wages include
13 minimum wages and compensation for all hours worked, overtime compensation, premium
14 pay for missed meal and rest breaks, and business expense reimbursement, among others.

15 21. FMP has also violated Labor Code section 558 and engaged in business
16 practices which violate Business and Professions Code Section 17200.

17 22. In addition, Plaintiff was unequivocally retaliated against in violation of Labor
18 Code section 1102.5 and wrongfully terminated from his employment after voicing his
19 concerns and complaining to management about the company's illegal practices concerning
20 employee safety certification testing. As part of his employment, Plaintiff was required to
21 complete safety certification tests online. However, FMP management, including Kirsten
22 Johnson, insisted on taking the safety tests for Plaintiff and did in fact take the tests on
23 Plaintiff's behalf. Ms. Johnson would often instruct Plaintiff to stay logged into his email on
24 the work computer so that she could complete the tests. Plaintiff complained about the
25 wrongfulness/illegality of this practice to no avail. Ms. Johnson would continue taking the
26 tests for Ms. Plaintiff as he would receive notifications while he was driving that he had taken
27 the tests. Plaintiff also complained to management about the unsafe nature of the delivery
28 vehicle FMP had assigned him to drive. Plaintiff complained to Ms. Johnson about the exhaust

1 fumes/smell getting inside the car, causing him headaches. FMP management ignored
2 Plaintiff's complaints. In late February 2024, Plaintiff once again voiced his discomfort with
3 FMP's handling of the safety certification testing. Following Plaintiff's complaints about the
4 safety certification tests, FMP retaliated against Plaintiff, reduced his work schedule, and
5 shortly thereafter, terminated his employment. FMP terminated Plaintiff on or around March
6 4, 2024 for "insubordination" and not clocking out at 4:30 p.m. as instructed to do so during
7 the prior work week (Plaintiff clocked out at 5:00 p.m. since deliveries came in late that day
8 and he proceeded to clock out only after he finished his work). It is Plaintiff's position that
9 Plaintiff's termination was unequivocally pretextual as FMP had the required retaliatory
10 animus.

11 23. For the reasons herein, on behalf of himself and the Aggrieved Employees,
12 Plaintiff alleges that FMP committed the following violations of the California Labor Code
13 and the Wage Order: 1) failed to pay wages for all time worked or subject to FMP's control,
14 including minimum wages and correctly-calculated overtime wages; 2) failed to provide meal
15 periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and
16 permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to
17 reimburse reasonably necessary business expenses; 5) failed to provide compliant wage
18 statements; 6) failed to maintain accurate records; and 7) failed to timely pay all wages owed
19 during and upon separation of employment.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

22 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

23 **(By Plaintiff against all Defendants)**

24 24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

25 25. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
26 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
27 and the Wage Order.

28 26. Section 2(H) of the Wage Order defines "hours worked" as "the time during

1 which an employee is subject to the control of an employer, and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.”

3 27. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to
6 employees 18 years of age or over and to employees 16 or
7 17 years of age who are not required by law to attend
8 school and are not otherwise prohibited by law from
9 engaging in the subject work. Such employees shall not
10 be employed more than eight (8) hours in any workday or
11 more than 40 hours in any workweek unless the employee
12 receives one and one-half (1 ½) times such employee’s
13 regular rate of pay for all hours worked over 40 hours in
14 the workweek. Eight (8) hours of labor constitutes a day’s
15 work. Employment beyond eight (8) hours in any
16 workday or more than six (6) days in any workweek is
17 permissible provided the employee is compensated for
18 such overtime at not less than:

14 (a) One and one-half (1 ½) times the employee’s
15 regular rate of pay for all hours worked in excess
16 of eight (8) hours up to and including 12 hours in
17 any workday, and for the first eight (8) hours
18 worked on the seventh (7th) consecutive day of
19 work in a workweek.

18 (b) Double the employee’s regular rate of pay for
19 all hours worked in excess of 12 hours in any
20 workday and for all hours worked in excess of
21 eight (8) hours on the seventh (7th) consecutive
22 day of work in a workweek.

22 (c) The overtime rate of compensation required to
23 be paid to a nonexempt full-time salaried
24 employee shall be computed by using the
25 employee’s regular hourly salary as one-fortieth
26 (1/40) of the employee’s weekly salary.

25 28. Section 4 of the Wage Order requires an employer to pay non-exempt employees
26 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
27 an employer has actual or constructive knowledge that employees are working.

28 29. Labor Code section 510 states:

1 Eight hours of labor constitutes a day's work. Any work in excess
2 of eight hours in one workday and any work in excess of 40
3 hours in any one workweek and the first eight hours worked on
4 the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the
6 regular rate of pay for an employee. Any work in excess of 12
7 hours in one day shall be compensated at the rate of no less than
8 twice the regular rate of pay for an employee. In addition, any
9 work in excess of eight hours on any seventh day of a workweek
shall be compensated at the rate of no less than twice the regular
rate of pay of an employee. Nothing in this section requires an
employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work.

10
11 30. California Labor Code § 1194 invalidates any agreement between an employer
12 and an employee to work for less than the minimum wage required under the applicable Wage
13 Order.

14 31. California Labor Code § 1197 makes it unlawful for an employer to pay an
15 employee less than the minimum wage required under the applicable Wage Order for all hours
16 worked during a payroll period.

17 32. California Labor Code § 1198 makes it unlawful for an employer to employ an
18 employee under conditions that violate the Wage Order.

19 33. In conjunction, these provisions of the California Labor Code require employers
20 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
21 for all hours worked, including unrecorded hours when the employer knew or reasonably should
22 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
23 *Co.* (2000) 22 Cal.4th 575, 585.)

24 34. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
25 and forty (40) hours in one workweek without compensating him for such time worked at the
26 premium rates required by California law.

27 35. As described more fully above, Defendants failed to pay all minimum, regular,
28 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded

1 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
2 based on correct regular rates of pay.

3 36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
4 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
5 during each pay period during the applicable limitations period, including minimum, overtime,
6 and double-time wages.

7 37. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
8 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
9 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

12 **(Lab. Code §§ 226.7 and 1198)**

13 **(By Plaintiff against all Defendants)**

14 38. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 39. At all relevant times during the applicable limitations period, Plaintiff was a
16 non-exempt employee of Defendants and entitled to the benefits and protections of California
17 Labor Code §§ 226.7, 1198, and the Wage Order.

18 40. Labor Code § 1198 states,

19 "The maximum hours of work and the standard conditions of labor
20 fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. The employment of any
22 employee for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful."

24 41. In relevant part, Section 12 of the Wage Order states:

25 **Rest Periods:**

26 (A) Every employer shall authorize and permit all employees
27 to take rest periods, which insofar as practicable shall be in the
28 middle of each work period. The authorized rest period time
shall be based on the total hours worked daily at the rate often
(10) minutes net rest time per four (4) hours or major fraction
thereof. However, a rest period need not be authorized for
employees whose total daily work time is less than three and
one-half (3 1/2) hours. Authorized rest period time shall be

1 counted as hours worked for which there shall be no deduction
2 from wages.

3 (B) If an employer fails to provide an employee a rest period
4 in accordance with the applicable provisions of this Order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee's regular rate of compensation for each work day that
7 the rest period is not provided.

8 42. In addition, Labor Code Section 226.7 states

9 (b) An employer shall not require an employee to work during a
10 meal or rest or recovery period mandated pursuant to an applicable
11 statute, or applicable regulation, standard, or order of the Industrial
12 Welfare Commission, the Occupational Safety and Health Standards
13 Board, or the Division of Occupational Safety and Health.

14 (c) If an employer fails to provide an employee a meal or rest or
15 recovery period in accordance with a state law, including, but not
16 limited to, an applicable statute or applicable regulation, standard, or
17 order of the Industrial Welfare Commission, the Occupational Safety
18 and Health Standards Board, or the Division of Occupational Safety and
19 Health, the employer shall pay the employee one additional hour of pay
20 at the employee's regular rate of compensation for each workday that
21 the meal or rest or recovery period is not provided.

22 43. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
23 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

24 44. Defendants failed to authorize and permit Plaintiff to take compliant rest
25 periods and failed to pay one hour of correctly-calculated premium pay for each day such a
26 rest period was not provided.

27 45. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
28 an amount subject to proof to the extent he was not paid additional wages owed for all rest
breaks not provided to him.

46. By reason of the above, Plaintiff is entitled to premium wages for workdays in
which one or more rest breaks were not provided to him pursuant to California Labor Code §
226.7, plus interest and costs.

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employee's regular rate of compensation for each workday that the meal period is not provided.

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

53. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

54. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all meal periods not provided to him.

55. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

56. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

57. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the Wage Order.

58. In pertinent part, California Labor Code § 2802(a) states:

An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.

59. Section 9(B) of the Wage Order states:

1 When tools or equipment are required by the employer or are necessary to
2 the performance of a job, such tools and equipment shall be provided and
3 maintained by the employer, except that an employee whose wages are at
4 least two (2) times the minimum wage provided herein may be required to
provide and maintain hand tools and equipment customarily required by
the trade or craft.

5 60. California Labor Code § 1198 prohibits employers from employing their
6 employees under conditions prohibited by the Wage Order.

7 61. At all relevant times during the applicable limitations period, Defendants
8 required Plaintiff to use his own personal cell phones to communicate with management
9 concerning work matters. However, Defendants did not reimburse Plaintiff for these mobile
10 phone expenses. Accordingly, Defendants were in violation of California Labor Code sections
11 2800 and 2802.

12 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
14 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
15 of performing his duties.

16 63. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
17 expenditures and losses and interest due and owing to within three years (3) of the date of the
18 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
19 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **(California Labor Code Section 226)**

23 **(By Plaintiff against all Defendants)**

24 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 65. Pursuant to California Labor Code Section 226, every employer must furnish
26 each employee an itemized statement of wages and deductions at the time of payment of wages.

27 66. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
28 that accurately reflected all information required by Labor Code Section 226, including but not

1 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
2 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
3 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
4 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
5 California Labor Code Section 226(a).

6 67. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
7 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
8 violation occurs and one hundred dollars (\$100) per employee for each violation in a
9 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
10 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
11 action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

12 68. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
13 sustained damages, including loss of earnings, in an amount to be established at trial. As a
14 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
15 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
16 and attorney's fees pursuant to statute.

17 69. Under this cause of action, Plaintiff prays for penalties due under the statutes
18 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
19 proof at trial.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

22 **(California Labor Code Sections 201-203)**

23 **(By Plaintiff against all Defendants)**

24 70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 71. Pursuant to California Labor Code Section 201(a), an employer who discharges
26 an employee must immediately pay for all compensation due and owing.

27 72. Pursuant to California Labor Code Section 202, when an employee resigns, the
28 employer must pay all compensation due and owing within 72 hours of resignation, or on the

1 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

2 73. Pursuant to California Labor Code Section 203, if an employer willfully fails to
3 pay, without abatement or reduction, any wages of an employee whose employment ends, the
4 wages of the employee shall continue as a penalty from the due date at the same rate until paid
5 or until an action is commenced; however, the wages shall not continue for more than 30 days
6 for failure to pay an employee owed wages.

7 74. After Plaintiff's employment with Defendants ended, Defendants willfully
8 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

9 75. Under this cause of action, Plaintiff prays for penalties due under the statutes
10 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
11 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
12 immediately preceding the filing of this lawsuit.

13 76. Under this cause of action, Plaintiff also prays for attorney's fees and costs
14 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
15 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

16 77. Under this cause of action, Plaintiff prays for penalties due under the statutes
17 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
18 proof at trial.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

21 **(California Labor Code Section 204)**

22 **(By Plaintiff against all Defendants)**

23 78. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 79. California Labor Code Section 204 establishes the fundamental right of all
25 employees in the State of California to be paid wages in a timely fashion for their work.

26 80. At all times relevant during the liability period, Defendants failed to pay
27 Plaintiff the full amount of all owed wages when due as required by California Labor Code
28 Section 204.

1 81. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
2 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
3 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
4 worked, including the minimum wage, overtime hours, double time hours, and premium pay
5 for missed meal and rest breaks.

6 82. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
7 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
8 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
9 directly from Defendants' records or indirectly based on information from Defendants' records.

10 83. Under this cause of action, Plaintiff prays for penalties due under the statutes
11 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
12 proof at trial.

13 **EIGHTH CAUSE OF ACTION**

14 **RETALIATION**

15 **(Lab. Code § 1102.5)**

16 **(By Plaintiff against all Defendants)**

17 84. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 85. According to Labor Code section 1102.5, subdivision (b),

19 An employer, or any person acting on behalf of the employer, shall not retaliate
20 against an employee for disclosing information, or because the employer
21 believes that the employee disclosed or may disclose information, ... to a
22 person with authority over the employee or another employee who has the
23 authority to investigate, discover, or correct the violation or noncompliance,...
24 if the employee has reasonable cause to believe that the information discloses a
violation of state or federal statute, or a violation of or noncompliance with a
local, state, or federal rule or regulation, regardless of whether disclosing the
information is part of the employee's job duties.

25 86. According to Labor Code section 1102.5, subdivision (c), an employer may not
26 retaliate against an employee for refusing to participate in an activity that would result in a
27 violation of state or federal statute, or a violation or noncompliance with a state or federal rule
28 or regulation.

1 87. This statute reflects the broad public policy interest in encouraging workplace
2 whistleblowers to report unlawful acts without fearing retaliation.

3 88. Defendants were employers for purposes of California law.

4 89. Plaintiff was an employee of Defendants, performing work on behalf of
5 Defendants.

6 90. During his employment tenure, Plaintiff complained to management about
7 about the company's illegal practices concerning employee safety certification testing as well
8 as the unsafe nature of the delivery vehicle FMP had assigned him to drive. Following
9 Plaintiff's complaints about the safety certification tests and unsafe vehicle, FMP retaliated
10 against Plaintiff by reducing his work schedule, and shortly thereafter, terminated his
11 employment.

12 91. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
14 to, loss of income (past and future), loss of employment benefits (past and future), general and
15 compensatory damages (past and future), mental pain and anguish and emotional distress (past
16 and future), and will continue to suffer in the future, in an amount to be proved at trial.

17 92. Plaintiff requests all available relief under Labor Code § 1102.5 including
18 damages and the imposition of civil penalties of \$10,000 for each violation as well as
19 attorney's fees.

20 93. The foregoing conduct engaged in by Defendants and each of their directors,
21 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
22 ratified, and carried on with a conscious and willful disregard of their workers' right to work
23 in an environment free of retaliation and labor code violations, so as to justify the imposition
24 of punitive damages to punish and set an example of said Defendants.

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1 **NINTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, *et seq.*)**

4 **(By Plaintiff against all Defendants)**

5 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 95. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
7 2004 (“PAGA”) because he was employed by Defendants during the applicable statutory
8 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
9 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
10 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
11 PAGA, plus reasonable attorney’s fees and costs in this representative action.

12 96. During the applicable time period, Defendants violated California Labor Code
13 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1102.5, 1174, 1194, 1197, 1198, and 2802.

14 97. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
15 behalf of themselves and other current or former employees, to bring a civil action to recover
16 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

17 98. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
18 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’
19 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1102.5,
20 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following
21 amounts:

22 A. For violations of California Labor Code § 204, one hundred dollars
23 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
24 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
25 established by California Labor Code § 210).

26 B. For violations of California Labor Code § 226(a), two hundred fifty
27 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
28 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts

1 established by California Labor Code § 226.3).

2 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
3 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
4 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
5 California Labor Code § 558).

6 D. For violations of California Labor Code § 1174, five hundred dollars
7 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
8 California Labor Code § 1174.5).

9 E. For violations of California Labor Code § 1197, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
11 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
12 per pay period (regardless of whether the initial violations were intentionally committed)
13 (penalty amounts established by California Labor Code § 1197.1).

14 F. For violations of California Labor Code §§ 201, 202, 203, 1194, 1198,
15 and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
16 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
17 period for each subsequent violation (penalty amounts established by California Labor Code §
18 2699(f)(2)).

19 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
20 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
21 Code § 1102.5 during the applicable limitations period in the following amounts:

22 1) For violations of California Labor Code § 1102.5, an amount not
23 to exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(c), as
24 well as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by
25 California Labor Code § 1102.5(f)).

26 99. Plaintiff has complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letter dated March 16, 2024, Plaintiff filed written notice
28 online with the Labor and Workforce Development Agency ("LWDA") and gave written notice

1 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
2 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
3 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
4 take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff
5 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does
6 not intend to investigate these allegations.

7 100. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
8 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
9 connection with their claims for civil penalties.

10 **TENTH CAUSE OF ACTION**

11 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

12 **(By Plaintiff against all Defendants)**

13 101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 102. Plaintiff was employed by Defendants.

15 103. At all times during his employment with Defendants, Plaintiff performed his
16 duties with the utmost diligence and competence.

17 104. The state statutes recited below embody fundamental, substantial, and well-
18 established public policies of the United States and State of California. By terminating
19 Plaintiff, Defendants violated these fundamental, substantial, and well-established public
20 policies.

21 (A) According to Labor Code section 1102.5, subdivision (b), an employer
22 shall not retaliate against an employee for disclosing information to a person with authority
23 over the employee who has the authority to correct the violation if the employee has
24 reasonable cause to believe that the information "discloses a violation of state or federal
25 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

26 (B) In *Franklin v. Monadnock Co.* (2007) 151 Cal.App.4th 252, 260 the Court
27 stated, "An employer may not discharge an at will employee for a reason that violates
28 fundamental public policy. This exception is enforced through tort law by permitting the

1 discharged employee to assert against the employer a cause of action for wrongful discharge in
2 violation of fundamental public policy.

3 105. Plaintiff complained to management/ownership about the company's illegal
4 practices concerning employee safety certification testing as well as the unsafe nature of the
5 delivery vehicle FMP had assigned him to drive. Defendants retaliated against Plaintiff for his
6 complaints by reducing his work schedule and terminating his employment on or around
7 March 4, 2024.

8 106. Moreover, Plaintiff was forced to hire an attorney to assist him to end these
9 illegal activities.

10 107. As set forth above, said actions by Defendants were wrongful and in violation
11 of the fundamental principles of the public policy of the State of California as reflected in its
12 laws, objectives and policies. Said statutes and constitutional expressions of public policy
13 include, but are not limited to, the California Labor Code, and the California Constitution,
14 Article 1 section 8. These laws inure to the benefit of the public at large, and not just the
15 private interests of the employers and employees whom they govern or protect.

16 108. As a direct and proximate result of the aforementioned acts and omissions of
17 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
18 loss of income (past and future), loss of employment benefits (past and future), general and
19 compensatory damages (past and future), mental pain and anguish and emotional distress (past
20 and future), and will continue to suffer in the future, in an amount to be proved at trial.

21 109. The foregoing conduct engaged in by Defendants and each of their directors,
22 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
23 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
24 an environment free of retaliation and labor code violations, so as to justify the imposition of
25 punitive damages to punish and set an example of said Defendants.

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1 **ELEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff against all Defendants)**

5 110. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 111. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

9 112. Defendants engaged in unfair competition by failing to 1) pay employees for all
10 hours worked at the correct rates of pay and 2) pay their employees premium wages for
11 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
12 employees for necessary business expenses incurred in the course of performing their duties.

13 113. The unlawful conduct of Defendants alleged herein amounts to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200,
15 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
16 unfairly gained a competitive advantage over other comparable companies doing business in
17 California that comply with their legal obligations to, among other things, refrain from
18 retaliatory practices and prevent retaliation, pay their employees premium wages for workdays
19 in which they did not provide employees with one or more meal and rest periods, indemnify
20 them for all business expenses incurred during the course of performing their duties, including,
21 but not limited to, mobile phone expenses, and pay them all wages earned.

22 114. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
23 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
24 hours worked, failed to provide him with premium wages for missed meal and rest periods,
25 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
26 duties.

27 115. Pursuant to California Business & Professions Code § 17203, Plaintiff is
28 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him

1 or otherwise retained by means of their unlawful and unfair business practices.

2 116. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
3 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
4 benefit doctrine and/or the common fund doctrine.

5 117. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
6 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
7 thereon, as permitted by law, all in amounts subject to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 10 1. For compensatory damages including lost past and future wages, commissions, and all
11 other sums of money, including employment benefits, together with interest on said
12 amounts, and any other economic injury to Plaintiff, according to proof;
- 13 2. For general damages according to proof;
- 14 3. For special and consequential damages to the extent allowed by law;
- 15 4. For punitive and exemplary damages against Defendants in an amount subject to proof;
- 16 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
17 subject to proof at trial;
- 18 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
19 7. proof at trial;
- 20 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
21 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 22 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
23 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 24 10. For maximum civil penalties available under the Labor Code and applicable Wage
25 Order against Defendants as described more particularly in the Complaint;
- 26 11. For restitution and disgorgement for all unfair business practices by corporate
27 Defendant against Plaintiff in an amount according to proof;
- 28 12. For an order enjoining corporate Defendant from further unfair and unlawful business

- practices in violation of Business and Professions Code Sections 17200, et seq.;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j), and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: May 28, 2024

MM LAW, APC

By Maralle Messrelan
Maralle Messrelan, Esq.
Attorney for Plaintiff,
BUDDY INGALSBE