ELECTRONICALLY FILED
7/1/2024 1:39 PM
Kern County Superior Court
By Marina Mercado, Deputy

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

HERNAN NOTARIO CAZARIN, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

U.C.I. CONSTRUCTION, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: BCV-24-101433

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:

(1) FAILURE TO PAY ALL OVERTIME WAGES OWED (LABOR CODE §§ 204, 510, 558, 1194, 1198)

(2) FAILURE TO PAY ALL MINIMUM WAGES OWED (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);

(3) FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512, 558);

(4) FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS (LABOR CODE §§ 226.7, 516, 558);

(5) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);

(6) FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);

(7) FAILURE TO PAY ALL WAGES OWED UPON TERMINATION (LABOR CODE §§ 201-203);

(8) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and

(9) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq*.)

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Hernan Notario Cazarin ("Plaintiff"), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("FAC") against U.C.I. Construction, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this FAC for recovery of unpaid wages, interest, and penalties under California Business & Professions Code § 17200 *et. seq*., Labor Code §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*., 2802 and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"), in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Kern. Defendants own, maintain offices, transact business, have agent(s) within the County of Kern, and/or otherwise are found within the County of Kern, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the four years immediately preceding the filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*., 2802; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and Wage Order 16, which sets employment standards for the construction occupations, which includes the industry in which Plaintiff

worked for Defendants.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do) business by being a merit (non-union) construction company specializing in process piping, dairy, winery construction and industrial and concrete construction. Defendants employed Plaintiff and other, similarly-situated non-exempt employees within, among other counties, Kern County and the state of California and, therefore, were (and are) doing business in Kern County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 22) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff, a former employee, was employed by Defendants as a non-exempt employee from approximately August 29, 2022 through approximately January 18, 2024. During his employment with Defendants, Plaintiff held the job title of "Carpenter/Finisher." Plaintiff primarily performed his work duties at various job sites in California, including without limitation, San Diego, Modesto and San Francisco.

10. Plaintiff was generally scheduled to work four days a week, Monday through Thursday, from 6:00 a.m. to 4:30 p.m., but would sometimes work additional days during the week depending on the work. Despite his scheduled hours, Plaintiff often worked additional time both before and after his scheduled shift. Plaintiff would often work more than 8 hours in a workday and/or 40 hours in a workweek.

11. Plaintiff's supervisors generally kept track of Plaintiff's work time by filling out a timesheet for him. If Plaintiff completed his own timesheet, he was required to only record his scheduled hours rather than his actual work hours which often exceeded the scheduled hours.

12. During his employment with Defendants, Defendants did not compensate Plaintiff and other non-exempt employees for all hours worked. Specifically, prior to showing up at a particular job site to perform his duties, Plaintiff would be required to first pick up the work vehicle at his supervisor's location after which he would often then be required to go to Defendants' shop to load materials and tools before then traveling to a particular job site. Further, at the end of the shift, Plaintiff would be required to again go to Defendant's shop to unload materials before dropping the work vehicle. Despite these activities, Defendants only compensated Plaintiff for the time he was scheduled at the work site, and was not paid for the time traveling to and from Defendants' shop nor the time he was performing duties at the shop.

13. During Plaintiff's employment with Defendants, Defendants maintained a uniform policy or practice of failing to accurately record all time worked by Plaintiff and other non-exempt employees. Throughout Plaintiff's employment with Defendants, Defendants would keep track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. Specifically, Defendants maintained a uniform

policy or practice of having the supervisor record Plaintiff's hours. The supervisor would record rounded/scheduled hours and not the actual time Plaintiff began working and/or stopped working. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Plaintiff was routinely underpaid for his time worked. Further, during Plaintiff's employment with Defendants, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Plaintiff been properly paid for all of the time that he actually worked, he would have been paid additional minimum and/or overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Plaintiff, and also resulted in Defendants paying Plaintiff less than he was owed for the work he performed, including failing to pay him all required minimum and overtime wages.

14. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all required meal periods due to Defendants' meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, due to the work demands imposed by Defendants and the nature of the work, including without limitation, pouring/monitoring concrete, the meal periods were untimely, short, interrupted and/or otherwise unlawful. Further, Defendants did not require Plaintiff and the other non-exempt employees to clock in and out for or otherwise record their meal periods. And, to the extent a supervisor purported to record a meal period, the recorded meal period did not accurately reflect the length of the meal period, the time of the meal period nor whether a meal period was in fact not taken. Additionally, Plaintiff and other non-exempt employees would be required to don/doff equipment during the meal period which would further result in meal periods that were less than 30 minutes in length. Therefore, despite Defendants' failure to keep accurate records of Plaintiff's meal periods, Plaintiff is informed and believes that Defendants unlawfully and automatically deducted thirty minutes from Plaintiff's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length or after the end of the fifth hour of work.

15. Additionally, Defendants' meal period policies and practices fail to provide Plaintiff and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Plaintiff worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in

violation of California law.

16. Although Plaintiff was not provided with all legally-compliant meal periods to which she was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7.

17. In addition, throughout Plaintiff's employment with Defendants, Plaintiff was not authorized and permitted to take legally required rest periods due to Defendants' unlawful rest period policies and practices. Defendants' rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, *or major fraction thereof*, and Plaintiff's work duties, including without limitation having to monitor poured concrete, prevented him from being able to take off-duty rest periods at all times required by law. Additionally, Plaintiff and other non-exempt employees were not authorized and permitted to take a third rest period when they worked shifts in excess of 10.0 hours.

18. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7.

19. During Plaintiff's employment with Defendants, Plaintiff was required to use his personal cellular phone to discharge his duties as well as incur expenses on various tools and materials necessary to perform his job. Specifically, Plaintiff and other non-exempt employees were required to use their personal cellular phone for a variety of required work activities, including, but not limited to communicating with supervisors and other employees. He also had to purchase such materials as tubes and bags. Defendants knew or should have known that Plaintiff was necessarily incurring expenses due to the use of his personal cellular phones and purchase of materials in the direct discharge of his duties. Yet, despite the necessity of Plaintiff and other non-exempt employees using their personal cellular phone and purchasing materials for work activities and Defendants knowing or should have knowing about same, they were not reimbursed for a reasonable portion of their cellular phone expenses by Defendants, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, and not reimbursed for any materials they were required to purchase.

20. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal

and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

21. As a further result of Defendants' failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide pay Plaintiff all wages owed upon his separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

22. **Class Definitions**: Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and were subject to Defendants' timekeeping policies/practices, during the four years immediately preceding the filing of the lawsuit through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies/practices, during the four years immediately preceding the filing of the lawsuit through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0, during the four years immediately preceding the filing of the lawsuit through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours, during the four years immediately preceding the filing of the lawsuit through the present.

e. The Expense Reimbursement Class consist of all of Defendants' current and former non-exempt employees in California who incurred expenses in the discharge of their duties during the four years immediately preceding the filing of the lawsuit through the present.

f. The Wage Statement Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

g. The Waiting Time Penalty Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class who separated their employment with Defendants, during the three years immediately preceding the filing of the lawsuit through the present.

h. The UCL Class consists of members of (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class, (iv) Rest Period; (v) Expense Reimbursement Class; (vi) Wage Statement Class; and/or (vii) Waiting Time Penalty Class, during the four years immediately preceding the filing of the lawsuit through the present.

23. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

24. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

25. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest**: There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages and/or overtime wages at the regular rate to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1192, 1194, 1194.2, 1197, 1197.1, 1198, and 1774;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

iv. Whether Defendants furnished legally compliant wage statements to members of the

Wage Statement Class pursuant to Labor Code § 226;

v. Whether Defendants paid all wages owed to its terminated/separated employees at the time of said termination/separation pursuant to Labor Code §§ 201-203;

vi. Whether Defendants' policies and practices (or lack thereof) for reimbursing members of the Expense Reimbursement Class violated California law; and

vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

26. **Predominance of Common Questions**: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform minimum wage and overtime wage payment, meal and rest period policies/practices, reimbursement policies/practices and wage statement practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

27. **Typicality**: The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum wages, overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal periods or not authorized or permitted to take compliant rest periods, was not reimbursed for business expenses, was not provide accurate, itemized wage statements, and was not provided with all wages due upon termination.

28. **Adequacy of Representation**: Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in

state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

29. **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 22 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 16. Labor Code § 510 and Wage Order 16, Section 3 require an employer to pay an employee "one and one-half (1½) times the regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 16, Section 3 also require an employer to pay an employee double the employee's regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours. Defendants also caused Plaintiff and the members of the Overtime Class to work in excess of 12 hours in a workday but did not properly compensate Plaintiff and the members of the Overtime Class at double their regular rate of pay for such hours.

33. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 16, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

36. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 16. Wage Order 16, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum wages for such hours.

37. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

38. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 16, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

<u>THIRD CAUSE OF ACTION</u>

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 16, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

41. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, California Code of Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

<u>FOURTH CAUSE OF ACTION</u>

FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS

(AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

43. Wage Order 16, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

44. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

45. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 16, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. It was necessary and at the obedience and/or direction of Defendants for Plaintiff and members of the Expense Reimbursement Class to use their personal cellular phones and purchase materials to perform their job duties, and thereby incur expenses. It was also necessary for members of the Expense Reimbursement Class to necessarily incur other business expenses in the direct discharge of their duties.

48. Defendants knew or should have known that Plaintiff and members of the Expense Reimbursement Class necessarily incurred expenses as part of the use of personal cellular phones and purchase of materials for the discharge of their duties at Defendants' direction, and also incurred other business expenses.

49. Although Plaintiff and members of the Class incurred these expenses in the direct discharge of their job duties, Defendants did not reimburse these employees for such necessary work expenditures during the four years preceding the filing of the Complaint.

50. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer."

51. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 16, § 9, Plaintiff and members of the Expense Reimbursement Class were damaged in sums, which will be shown according to proof.

52. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

53. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which

they incurred the initial necessary expenditure.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their actual regular and overtime hours worked, total gross wages earned, and total net wages earned, in violation of Labor Code § 226 *et seq*.

56. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all earned overtime and minimum wages, and meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

57. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq*., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq*.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES OWED UPON TERMINATION

(AGAINST ALL DEFENDANTS)

58. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

59. This cause of action is brought pursuant to Labor Code §§ 201-203 which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

60. Defendants failed to timely pay Plaintiff all of her final wages at the time of termination, which include, among other things, underpaid minimum wages, overtime wages and meal period and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

61. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Penalty Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

63. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq*., by failing to pay all overtime and/or minimum wages owed, failing to provide all required meal periods and failing to authorize and permit all required rest periods, and failing to pay meal and rest period premium wage payments.

64. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

65. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by

Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

66. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

67. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

68. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

69. Defendants have committed several Labor Code violations against Plaintiff and other Aggrieved Employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and the aggrieved employees all overtime compensation earned;

b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and the aggrieved employees the statutory minimum wage for all hours worked;

c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and the aggrieved employees;

d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and the aggrieved employees;

e) Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and the aggrieved employees for all necessary expenditures incurred;

f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and the aggrieved employees with accurate and compliant itemized wage statements;

g) Defendants violated Labor Code § 204 by failing to pay Plaintiff and the aggrieved employees all earned wages at least twice during each calendar month;

h) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and the aggrieved employees; and

i) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Plaintiff and other aggrieved employees.

70. On April 25, 2024, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 65 (a)-(j). Attached hereto as **Exhibit 1** is a true and correct copy of the April 25, 2024 correspondence. Now that at least sixty-five days have passed from Plaintiff notifying the LWDA and Defendants of these violations, and the LWDA taking no action, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

71. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himsefl and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;

3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.

5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and 1198;

6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq*.;

10. Upon the Seventh Cause of Action, for waiting time penalties pursuant to Labor § 203;

11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*.;

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code §

226.3 per employee per pay period; (3) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 65 (a)-(j) above;

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

15. For such other and further relief the Court may deem just and proper.

Dated: July 1, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: Scott M. Lidman
Milan Moore
Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: July 1, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: Scott M. Lidman
Milan Moore
Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW
2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245
OFFICE: (424) 322-4772
FAX: (424) 322-4775

April 25, 2024

VIA LWDA WEBSITE
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED
U.C.I. Construction, Inc.
c/o CT Corporation
Agent for Service of Process
330 N Brand Blvd.
Glendale, CA 91203

Re: *Hernan Notario Cazarin v. U.C.I. Construction, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Hernan Notario Cazarin ("Mr. Cazarin") in claims arising from his employment with U.C.I. Construction, Inc. ("Defendant"). Mr. Cazarin is an "aggrieved employee" as defined by Labor Code sections 2699, *et seq*. due to Defendant's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an "aggrieved employee" should be considered to include all current and former hourly, non-exempt employees working for Defendant in California during the one year immediately preceding the date of this letter through the present date, and continuing through a civil judgment if the LWDA takes no action and Mr. Cazarin files a civil lawsuit seeking civil penalties.

Defendant does business as a merit (non-union) construction company specializing in process piping, dairy, winery construction and industrial and concrete construction. Mr. Cazarin, a former employee, was employed by Defendant as a non-exempt employee from approximately August 29, 2022 through approximately January 18, 2024. During his employment with Defendant, Mr. Cazarin held the job title of "Carpenter/Finisher." Mr. Cazarin primarily performed his work duties at various job sites in California, including without limitation, San Diego, Modesto and San Francisco.

Mr. Cazarin was generally scheduled to work four days a week, Monday through Thursday, from 6:00 a.m. to 4:30 p.m., but would sometimes work additional days during the week depending on the work. Despite his scheduled hours, Mr. Cazarin often worked additional time both before and after his scheduled shift. Mr. Cazarin would often work more than 8 hours in a workday and/or 40 hours in a workweek.

Mr. Cazarin's supervisors generally kept track of Mr. Cazarin's work time by filling out a timesheet for him. If Mr. Cazarin completed his own timesheet, he was required to only record his scheduled hours rather than his actual work hours which often exceeded the scheduled hours.

During his employment with Defendant, Defendant did not compensate Mr. Cazarin and other non-exempt employees for all hours worked. Specifically, prior to showing up at a particular job site to perform his duties, Mr. Cazarin would be required to first pick up the work vehicle at his supervisor's location after which he would often then be required to go to Defendant' shop to load materials and tools before then traveling to a particular job site. Further, at the end of the shift, Mr. Cazarin would be required to again go to Defendant's shop to unload materials before dropping the work vehicle. Despite these activities, Defendant only compensated Mr. Cazarin for the time he was scheduled at the work site, and was not paid for the time traveling to and from Defendant' shop nor the time he was performing duties at the shop.

During Mr. Cazarin's employment with Defendant, Defendant maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Cazarin and other non-exempt employees. Throughout Mr. Cazarin's employment with Defendant, Defendant would keep track of Mr. Cazarin's time worked and would unlawfully shave Mr. Cazarin's work time and/or round Mr. Cazarin's work time such that Mr. Cazarin would not be fully paid for all time worked. Specifically, Defendant maintained a uniform policy or practice of having the supervisor record Mr. Cazarin's hours. The superivosr would record rounded/scheduled hours and not the actual time Mr. Cazarin began working and/or stopped working. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant' favor such that Mr. Cazarin was routinely underpaid for his time worked. Further, during Mr. Cazarin's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Cazarin been properly paid for all of the time that he actually worked, he would have been paid additional minimum and/or overtime wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Cazarin, and also resulted in Defendant paying Mr. Cazarin less than he was owed for the work he performed, including failing to pay him all required minimum and overtime wages.

Throughout Mr. Cazarin's employment with Defendant, Mr. Cazarin was not provided all required meal periods due to Defendant' meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, due to the work demands imposed by Defendant and the nature of the work, including without limitation, pouring/monitoring concrete, the meal periods were untimely, short, interrupted and/or otherwise unlawful. Further, Defendant did not require Mr. Cazarin and the other non-exempt employees to clock in and out for or otherwise record their meal periods. And, to the extent a supervisor purported to record a meal period, the recorded meal period did not accurately reflect the length of the meal period, the time of the meal period nor whether a meal period was in fact not taken. Additionally, Mr. Cazarin and other non-exempt employees would be required to don/doff equipment during the meal period which would further result in meal periods that were less than 30 minutes in length. Therefore, despite Defendant' failure to keep accurate records of Mr. Cazarin's meal periods, Mr. Cazarin is informed and believes that Defendant unlawfully and automatically deducted thirty minutes from Mr. Cazarin's work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length or after the end of the fifth hour of work.

Additionally, Defendant's meal period policies and practices fail to provide Mr. Cazarin and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Cazarin worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law.

Although Mr. Cazarin was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Mr. Cazarin with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7.

In addition, throughout Mr. Cazarin's employment with Defendant, Mr. Cazarin was not authorized and permitted to take legally required rest periods due to Defendant' unlawful rest period policies and practices. Defendant' rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, or major fraction thereof, and Mr. Cazarin's work duties, including without limitation having to monitor poured concrete, prevented him from being able to take off-duty rest periods at all times required by law. Additionally, Mr. Cazarin and other non-exempt employees were not authorized and permitted to take a third rest period when they worked shifts in excess of 10.0 hours.

On those occasions when Mr. Cazarin was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Cazarin with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7.

During Mr. Cazarin's employment with Defendant, Mr. Cazarin was required to use his personal cellular phone to discharge his duties as well as incur expenses on various tools and materials necessary to perform his job. Specifically, Mr. Cazarin and other non-exempt employees were required to use their personal cellular phone for a variety of required work activities, including, but not limited to communicating with supervisors and other employees. He also had to purchase such materials as tubes and bags. Defendant knew or should have known that Mr. Cazarin was necessarily incurring expenses due to the use of his personal cellular phones and purchase of materials in the direct discharge of his duties. Yet, despite the necessity of Mr. Cazarin and other non-exempt employees using their personal cellular phone and purchasing materials for work activities and Defendant knowing or should have knowing about same, they were not reimbursed for a reasonable portion of their cellular phone expenses by Defendant, as mandated by Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137, and not reimbursed for any materials they were required to purchase.

As a result of Defendant' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Cazarin.

As a further result of Defendant' failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendant failed to provide pay Mr. Cazarin all wages owed upon his separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"):

Minimum Wage Violations

Defendant was required to pay Mr. Cazarin and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197, 1197.1; The Wage Order 16, § 4. Mr. Cazarin and other aggrieved employees were not paid for all hours worked due to Defendant's unlawful practices and procedures. As alleged above, Defendant's unlawful policies and procedures were to pay pursuant to the scheduled hours, even though Defendant knowingly permitted and required Mr. Cazarin and other aggrieved employees to be under their direction and control both before and after the scheduled shifts. These practices by Defendant resulted in Defendant not paying Mr. Cazarin and other aggrieved employees for all wages owed for the work they performed, including failing to pay them all required minimum wages.

Overtime Violations

Defendant was required to pay Mr. Cazarin and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 16, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." As alleged above, Defendant's unlawful policies and procedures were to pay pursuant to the scheduled hours, even though Defendant knowingly permitted and required Mr. Cazarin and other aggrieved employees to be under their direction and control both before and after their scheduled shifts. As a result of Defendant's policies and/or practices that fail to compensate for all hours worked, Mr. Cazarin and other aggrieved employees were deprived of all required overtime wages earned.

Meal Period Violations

As alleged above, Defendant failed to provide the aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. As described above, due to the work demands, Defendant failed to provide Mr. Cazarin and other aggrieved employees with all legally compliant meal periods. In addition, Defendant failed to provide Mr. Cazarin or other aggrieved employees with second meal periods on shifts over 10.0 hours. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Cazarin and other aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. Specifically, Mr. Cazarin and other aggrieved employees were not authorized and permitted to take all required rest periods due to Defendant's rest period policies/practices, which upon information and belief, fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Additionally, Defendant has often failed to authorize and permit a third rest period when Mr. Cazarin worked a shift in excess of 10.0 hours. As a result, Mr. Cazarin and the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Business Expenses

Defendant failed to reimburse Mr. Cazarin and other Aggrieved Employees for necessary work expenses, including, but not limited to, expenses incurred for the reasonable portion of cellular phone expenses incurred and for the purchase of materials in the direct discharge of the job duties of such employees. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 16, § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Mr. Cazarin and other Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Cazarin and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and/or overtime wages earned, meal and rest period premiums, total gross wages earned, and total net wages earned, in violation of Labor Code § 226 *et seq*. Defendant's failure to furnish Mr. Cazarin and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and/or overtime wages earned and meal and rest period premiums, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Cazarin and other aggrieved employees all of their final wages at the time of separation, which included, among other things, unpaid minimum and/or overtime wages, and meal and rest period premium wages.

As an "aggrieved employee," Mr. Cazarin will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Cazarin's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Cazarin and other aggrieved employees the statutory minimum wage for all hours worked;

b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Cazarin and other aggrieved employees all overtime compensation earned;

c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Cazarin and the aggrieved employees;

d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Cazarin and the aggrieved employees;

e) Defendant violated Labor Code § 2802 by failing to reimburse Mr. Cazarin and other Aggrieved Employees for necessary work expenditures;

f) Defendant violated Labor Code § 226 by failing to furnish Mr. Cazarin and other aggrieved employees with accurate and compliant itemized wage statements;

g) Defendant violated Labor Code §§ 204 and 210 by failing to pay Mr. Cazarin and other aggrieved employees all earned wages at least twice during each calendar month;

h) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Cazarin and other aggrieved employees; and

i) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Cazarin and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC

Scott M. Lidman