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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

LAWRENCE BOTELHO, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

ENTERPRISE RENT-A-CAR COMPANY
OF SAN FRANCISCO, LLC; a Delaware
limited liability company corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. C24-01416

CLASS ACTION

Assigned for All Purposes To:
Hon. Charles S. Treat
Dept.: 12

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Penalties Pursuant to Labor Code § 203; and
7. Violation of Business & Professions Code § 17200 *et seq.*; and
8. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff LAWRENCE BOTELHO, (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all similarly situated current and
6 former employees within the State of California who, at any time four (4) years prior to the filing of
7 this lawsuit, are or were employed as non-exempt hourly employees by Defendants ENTERPRISE
8 RENT-A-CAR COMPANY OF SAN FRANCISCO, LLC; a Delaware limited liability company;
9 and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).
10 Plaintiff alleges that Defendants, and each of them, violated various provisions of the California
11 Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and California Business
12 & Professions Code, and seeks redress.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in CONTRA COSTA County and/or throughout California, and consistently
17 worked at Defendants’ behest without being paid all wages due. More specifically, Plaintiff and the
18 other similarly situated Class members were employed by Defendants and worked at Defendants’
19 facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred.
20 Upon information and belief, Plaintiff is employed by Defendants and (1) shares similar job duties
21 and responsibilities, (2) is subjected to the same policies and practices, and (3) endures similar
22 violations at the hands of Defendants as the other Employee Class members who served in similar
23 and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work while
25 remaining under Defendants’ control before and after being on the clock for their daily work shift.
26 Defendants failed to provide Plaintiff and the Class with lawful meal and rest periods, as employees
27 were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest
28 periods as required by the Labor Code.

THE PARTIES

A. The Plaintiff

4. Plaintiff LAWRENCE BOTELHO has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California.

B. The Defendants

5. Defendant ENTERPRISE RENT-A-CAR COMPANY OF SAN FRANCISCO, LLC, ("ENTERPRISE") is a Delaware limited liability company with its principle executive offices in San Ramon, California, and has been listed as the employer on the wage statements issued to Plaintiff during the relevant time period. ENTERPRISE lists an address in San Ramon with the California Secretary of State and employs Plaintiff and the Class members in California, including at Defendants' offices and facilities in San Ramon, California, and throughout California and conducts business throughout California.

6. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with

1 Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

2 **JURISDICTION AND VENUE**

3 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
5 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
6 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
7 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
8 liabilities giving rise to this lawsuit occurred at least in part in Contra Costa County and Defendants
9 maintain and operate company offices and facilities in Contra Costa County, and employ Plaintiff
10 and other Class members in Contra Costa County and throughout California.

11 **FACTUAL BACKGROUND**

12 9. The Employees who comprise the Class and Collective, including Plaintiff, are
13 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
14 Employees who work in nonexempt positions at the direction of Defendants in the State of
15 California. Plaintiff and the Class members were either not paid by Defendants for all hours worked
16 or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff and
17 Employees were required to work off the clock by booting up their work computer. Additionally,
18 Plaintiff and Employees were required to use their personal cell phones for work-related activities
19 such as communicating with supervisors and clients while off the clock. Furthermore, the
20 uncompensated time included the time Employees worked off-the-clock during meal periods as a
21 result of Defendants' high demand. Plaintiff also contends that Defendants failed to pay Plaintiff
22 and the Class members all wages due and owing, failed to provide meal and rest breaks, and failed
23 to furnish accurate wage statements, all in violation of various provisions of the California Labor
24 Code and applicable Wage Orders. Additionally, Defendants required the Employee Class members
25 to clock in and out by using Defendant's manual punch card wall clock. The timekeeping system
26 thus permitted Defendants to record clock in and clock out times to the real-time minute. However,
27 rather than paying Plaintiff and the Class members for all hours and minutes they actually worked,
28 Defendants followed a uniform policy and practice of rounding all time entries, and generally did

1 so to the detriment of the Employees, and these unlawfully rounded time entries were inputted into
2 Defendants' payroll system from which wage statements and payroll checks were created.
3 Defendants did so with the ostensible intent of paying Class members only for the hours they were
4 scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff
5 contends this policy is not neutral and results, over time, to the detriment of the Class members by
6 systematically undercompensating them.

7 10. Defendants had also either failed to maintain timekeeping records for Plaintiff that
8 would permit them to discover the nature and extent of Defendants' unlawful rounding or has
9 refused to produce them to Plaintiff in response to their timely request to be provided with them.

10 11. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class
11 members all wages due and owing, by failing to provide meal and rest breaks, and failed to furnish
12 accurate wage statements, all in violation of various provisions of the California Labor Code and
13 applicable Wage Order provisions.

14 12. During the course of Plaintiff and the Class members' employment with
15 Defendants, they were not paid all wages they were owed, including for all work performed and
16 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
17 keep labor budgets low.

18 13. As a matter of uniform Company policy, Plaintiff and the Class members were
19 required to work during their meal and rest breaks which were not compensated by Defendants in
20 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular
21 wages and overtime for the time they were required to comply with other requirements imposed
22 upon them, which they had to complete while working through their meal and rest breaks and
23 without compensation. As a result Plaintiff and the Class members worked shifts over eight (8)
24 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
25 overtime rate for all such hours, including by being required to perform work duties and tasks
26 without pay and while off-the-clock and due to Defendants' unlawful rounding which caused
27 overtime to begin accruing before it did in Defendants' timekeeping and payroll systems. As a
28 result, Plaintiff and the Class members worked substantial overtime hours during their employment

1 with Defendants for which they were not compensated, in violation of the California Labor Code,
2 applicable IWC Wage Orders.

3 14. As a result of the above described daily work demands and pressures to work through
4 breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
5 members were not properly paid for all wages earned and for all wages owed to them by Defendants,
6 including when working more than eight (8) hours in any given day and/or more than forty (40)
7 hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and
8 Class members incurred overtime hours worked for which they were not adequately and completely
9 compensated, in addition to the hours they were required to work off the clock. To the extent
10 applicable, Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5
11 times the regular rate for the first eight hours of the seventh consecutive work day in a week and
12 overtime payments at the rate of 2 times the regular rate for hours worked over eight (8) on the
13 seventh consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

14 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
15 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
16 hours worked, and failing to pay minimum wage for all time worked as required by California Law.

17 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees
19 overtime compensation at premium overtime rates for all hours worked in excess of eight (8) hours
20 a day and/or forty (40) hours a week, and double-time rates for all hours worked in excess of twelve
21 (12) hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage
22 Orders.

23 17. Additionally, from at least four (4) years prior to the filing of this lawsuit and
24 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
25 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
26 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
27 not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of
28 wages at each Employee's effective hourly rate of pay, for each meal period that Defendants failed

1 to provide or deficiently provided.

2 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
3 present, Defendants have consistently failed to provide Employees with paid duty-free rest breaks
4 of not less than ten (10) minutes for every work period of four (4) or more consecutive hours; nor
5 did Defendant pay Employees premium pay for each day on which requisite rest breaks were not
6 provided or were deficiently provided at one hour of wages at each Employee's effective regular
7 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

8 19. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
9 continuing to the present, Defendants have consistently failed to provide Employees with timely,
10 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

11 20. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
12 continuing to the present, Defendants have consistently failed to keep accurate time and wage
13 records as required by California wage-and-hour laws.

14 21. From at least four (4) years prior to filing this lawsuit and continuing to the present,
15 Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at
16 the time of their termination of within seventy-two (72) hours of their resignation, as required by
17 California wage-and-hour laws.

18 22. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
19 Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1,
20 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 1670.5, 2698, and 2699, *et seq* and applicable
21 provisions of the IWC Wage Orders.

22 23. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
23 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
24 enjoyed from their violations of Labor Code.

25 **CLASS ALLEGATIONS**

26 24. Plaintiff brings this class action on behalf of himself and all others similarly situated
27 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
28 "All individuals employed by Defendants, at any time within four (4) years of the filing of this

lawsuit, as non-exempt, hourly employees within the State of California.

25. Further, plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

g. Subclass 7. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

26. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

27. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of

1 interest in litigation and proposed class is easily ascertainable.

2 **A. Numerosity**

3 28. The potential members of the class as defined are so numerous that joinder of all the
4 member of the class is impracticable. While the precise number of class member has not been
5 determined at this time, Plaintiff is informed and believes that, during the time period relevant to
6 this lawsuit, Defendants employed more than 100 individuals within the State of California.

7 29. Accounting for employee turnover during the relevant time period increases this
8 number substantially. Plaintiff alleges that Defendants' employment records will provide
9 information as to the number and location of all class members.

10 **B. Commonality**

11 30. There are questions of law and fact common to the class that predominate over any
12 questions affecting only individual class members. These common questions of law and fact include:

- 13 a. Whether Defendants failed to pay Employees minimum wages;
 - 14 b. Whether Defendants failed to pay Employees wages for all hours worked;
 - 15 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
16 § 510;
 - 17 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
18 Wage Orders, by failing to provide Employees with requisite meal periods or
19 premium pay in lieu thereof;
 - 20 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
21 Orders, by failing to provide Employees with requisite rest breaks or premium pay
22 in lieu thereof;
 - 23 f. Whether Defendants violated Labor Code § 226(a);
 - 24 g. Whether Defendants failed to keep accurate time and wage records;
 - 25 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
26 wages and compensation due and owing at the time of termination of employment;
 - 27 i. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 28

- 1 j. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
2 k. Whether Employees are entitled to equitable relief pursuant to Business and
3 Professions Code § 17200 *et seq.*

4 **C. Typicality**

5 31. The claims of the named plaintiff are typical of those of the other Employees.
6 Employees all sustained injuries and damages arising out of and caused by Defendant's common
7 course of conducts in violation of statutes, as well as regulations that have the force and effect of
8 law, as alleged herein.

9 **D. Adequacy of Representation**

10 32. Plaintiff will fairly and adequately represent and protect the interest of Employees.
11 Counsel who represents Employees are experienced and competent in litigating employment class
12 actions.

13 **E. Superiority of Class Action**

14 33. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
16 questions of law and fact common to all Employees predominate over any questions affecting only
17 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
18 Defendants' illegal policies or practices of failing to compensate Employees properly.

19 34. Class action treatment will allow those persons similarly situated to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

24 **(Against All Defendants)**

25 35. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 36. Defendants failed to pay Employees minimum wages for all hours worked.
28 Defendants had a consistent policy of misstating Employees time records and failing to pay

1 Employees for all hours worked. Specifically, Plaintiff and Employees were required to work off
2 the clock by performing both by booting up their work computer. Additionally, Plaintiff and
3 Employees were required to use their personal cell phones for work-related activities such as
4 communicating with supervisors and clients while off the clock. Furthermore, the uncompensated
5 time included the time Employees worked off-the-clock during meal periods as a result of
6 Defendants' high demand. Moreover, Defendants did not pay Plaintiff and Employees at the
7 applicable minimum wage for all hours worked. Additionally, Defendants rounded timekeeping
8 entries and revisions made to timekeeping records to reflect less time worked than was actually
9 worked and Defendants have also intentionally and improperly rounded, changed, adjusted and/or
10 modified Employee hours, while benefiting Defendants. This caused Employees to work without
11 compensation in excess of their eight-hour shift in a given work day. Defendants' uniform pattern
12 of unlawful wage and hour practices manifested, without limitation, applicable to Employees, as a
13 result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff
14 and the other members of the Employees as to minimum wage pay.

15 37. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
16 The minimum wage for employees fixed by the commission is the
17 minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

18 38. The applicable minimum wages fixed by the commission for work during the
19 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore
20 entitled to double the minimum wage during the relevant period.

21 39. The minimum wage provisions of California Labor Code are enforceable by private
22 civil action pursuant to California Labor Code § 1194(a) which states:

23 Notwithstanding any agreement to work for a lesser wage, any
24 employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
25 recover in a civil action the unpaid balance of the full amount of this
26 minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

27 40. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
28 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

1 California Labor Code § 1194.2 also provides for the following remedies:
2 In any action under Section 1194 . . . to recover wages because of
3 the payment of a wage less than the minimum wages fixed by an
4 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

5 41. Defendants have the ability to pay minimum wages for all time worked and have
6 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
7 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

8 42. Wherefore, Employees are entitled to recover the unpaid minimum wages (including
9 double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully
10 unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor
11 Code § 1194(a).

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

14 **(Against All Defendants)**

15 43. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 44. By their conduct, as set forth herein, Defendants violated California Labor Code §
18 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
19 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
20 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
21 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
22 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
23 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
24 paying Employees wages for all hours worked including time Plaintiff and Employees were
25 required to work off the clock by booting up their work computer. Additionally, Plaintiff and
26 Employees were required to use their personal cell phones for work-related activities such as
27 communicating with supervisors and clients while off the clock. Furthermore, the uncompensated
28 time included the time Employees worked off-the-clock during meal periods as a result of

1 Defendants' high demand. Employees regularly worked over 8 hours on a given day without
2 receiving overtime compensation.

3 45. Defendants consistently improperly rounded down, changed, adjusted Employees
4 time records, paid Employees less than their time records showed as demonstrated by Employees'
5 timesheets which reveal little variance between the hours worked by employees on a daily basis.

6 46. Employees have been damaged by these violations of California Labor Code §§ 204
7 and 510 (and the relevant orders of the Industrial Welfare Commission).

8 47. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
9 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
10 full amount of all their unpaid wages and overtime compensation, with interest, plus their
11 reasonable attorneys' fees and costs.

12 48. The forgoing uncompensated work caused Plaintiff and Employees to work in excess
13 of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to
14 overtime and double-time wages which were systemically denied.

15 49. Defendants' failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly.
17 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
18 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
19 compensation earned by Employees. Each such failure to make a timely payment of compensation
20 to Employees constitutes a separate violation of California Labor Code § 204.

21 50. Employees have been damaged by these violations of California Labor Code §§ 204
22 and 510 (and the relevant orders of the Industrial Welfare Commission).

23 51. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
24 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
25 full amount of all their unpaid wages and overtime compensation, with interest, plus their
26 reasonable attorneys' fees and costs.

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28 ///

1 **THIRD CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 52. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 53. Employees regularly worked shifts greater than five (5) hours and greater than ten
7 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more
8 than five (5) hours without providing him or her with a meal period of not less than thirty (30)
9 minutes or for a shift of more than ten (10) hours without providing him or her with a second meal
10 period of not less than thirty (30) minutes.

11 54. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Employees were also required to take meal periods after working well
14 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
15 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
16 period as required by law.

17 55. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7.

19 56. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
20 amount equal to one (1) hour of wages at their effective regular rates of pay for each meal period
21 not provided or deficiently provided, a sum to be proven at trial.

22 **FOURTH CAUSE OF ACTION**

23 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

24 **(Against All Defendants)**

25 57. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 58. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
28 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of

1 not less than ten (10) minutes for each consecutive four (4) hour shift.

2 59. Defendants failed to provide Employees with timely rest breaks of not less than ten
3 (10) minutes for each consecutive four (4) hour shift. Moreover, Defendants' policy of requiring the
4 Employees to keep their cell phones on throughout their rest breaks and to respond to any
5 emergencies or other situations that needed to be addressed prevented Employees from taking their
6 breaks.

7 60. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
8 (2016) "[D]uring required rest periods, employers must relieve their employees of all duties and
9 relinquish any control over how employees spend their time." Defendants did not allow Employees
10 to leave the Defendants' location and this is directly at odds with *Augustus*, as it "tethered
11 [employees] by time and policy to a particular location" and therefore fails to relieve employees of
12 all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269.

13 61. Moreover, Defendants did not compensate Employees with an additional hour of pay
14 at each Employee's effective hourly rate for each day that Defendants failed to provide them with
15 adequate rest breaks, as required under Labor Code § 226.7.

16 62. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
17 amount equal to one (1) hour of wages at their effective regular rates of pay for each day worked
18 without the required rest breaks, a sum to be proven at trial.

19 **FIFTH CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE § 226(a)**
21 **(Against All Defendants)**

22 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 64. California Labor Code § 226(a) requires an employer to furnish each of his or her
25 employees with an accurate, itemized statement in writing showing the gross and net earnings, total
26 hours worked, and the corresponding number of hours worked at each hourly rate; these statements
27 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
28 the employee's wages; or, if wages are paid by cash or personal check, these statements may be

1 given to the employee separately from the payment of wages; in either case the employer must give
2 the employee these statements twice a month or each time wages are paid.

3 65. Defendants failed to provide Employees with accurate itemized wage statements in
4 writing, as required by the Labor Code. Specifically, the wage statements by Defendants failed to
5 accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks,
6 and reflected the incorrect hours worked due to the rounding, all of which Defendants knew or
7 reasonably should have known were owed to Employees, as alleged hereinabove.

8 66. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
9 Employees suffered injuries, including among other things confusion over whether they received all
10 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
11 them to make mathematical computations to analyze whether the wages paid in fact compensated
12 them correctly for all hours worked.

13 67. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the
14 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
15 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
16 an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
17 and reasonable attorneys' fees.

18 68. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil
19 penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay
20 period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each
21 pay period.

22 69. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and any
23 other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown
24 according to proof.

25 **SIXTH CAUSE OF ACTION**
26 **VIOLATION OF LABOR CODE § 203**
27 **(Against All Defendants)**

28 70. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 71. Numerous Employees are no longer employed by Defendants; they either quit
3 Defendants' employ or were fired therefrom.

4 72. Defendants failed to pay these Employees all wages due and certain at the time of
5 termination or within seventy-two (72) hours of resignation.

6 73. The wages withheld from these Employees by Defendants remained due and owing
7 for more than thirty (30) days from the date of separation of employment.

8 74. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
9 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
10 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
11 to thirty (30) days from the date they were due.

12 **SEVENTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

14 **(Against All Defendants)**

15 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 76. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
18 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
19 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
20 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure § 1021.5.

22 77. Plaintiff is a "person" within the meaning of Business & Professions Code
23 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
24 relief, restitution, and other appropriate equitable relief.

25 78. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
26 practices.

27 79. Wage-and-hour laws express fundamental public policies. Paying employees their
28 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public

1 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
2 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
3 under substandard and unlawful conditions, and to protect law-abiding employers and their
4 employees from competitors who lower costs to themselves by failing to comply with minimum
5 labor standards.

6 80. Defendants have violated statutes and public policies. Through the conduct alleged
7 in this Complaint Defendants have acted contrary to these public policies, have violated specific
8 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
9 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff, and
10 all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
11 guaranteed to all employees under the law.

12 81. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
13 violation of the Business & Professions Code § 17200 *et seq.*

14 82. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
15 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
16 reasonable care should have known that their conduct was unlawful; therefore their conduct violates
17 the Business & Professions Code § 17200 *et seq.*

18 83. As a proximate result of the above-mentioned acts of Defendants, Employees have
19 been damaged, in a sum to be proven at trial.

20 84. Unless restrained by this Court Defendants will continue to engage in such unlawful
21 conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such
22 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
23 use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by
24 the Business & Professions Code, including but not limited to the disgorgement of such profits as
25 may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

3 **(Against All Defendants)**

4 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 86. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
7 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
8 alleged violators, Defendants.

9 87. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
10 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty
11 provisions, without limitation, based on the following California Labor Code sections: 201, 202,
12 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1182.12, 1185, 1194,
13 1194.2, 1197, 1198, 1199, 1670.5, 2698, and 2699, *et seq.*

14 88. The penalties shall be allocated as follows: 75% to the Labor and Workforce
15 Development Agency (LWDA) and 25% to the affected employee.

16 89. Employees also seek any and all penalties and remedies set forth in Labor Code §
17 558, which states:

18 (a) Any employer or other person acting on behalf of an employer who violates,
19 or causes to be violated, a section of this chapter or any provision regulating hours
20 and days of work in any order of the Industrial Welfare Commission shall be subject
21 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
22 underpaid employee for each pay period for which the employee was underpaid in
23 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent
violation, one hundred dollars (\$100) for each underpaid employee for each pay
period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
to the affected employee.

24 (b) If upon inspection or investigation the Labor Commissioner determines that
25 a person had paid or caused to be paid a wage for overtime work in violation of any
26 provision of this chapter, or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for
28 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

1 (c) The civil penalties provided for in this section are in addition to any other
2 civil or criminal penalty provided by law.

3 90. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
4 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
5 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
6 violation in a subsequent citation, for which the employer fails to provide the employee a wage
7 deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent
8 that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

9 91. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
10 LWDA and Defendants postmarked on May 29, 2024. The LWDA has not provided notice of its
11 intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

12 **RELIEF REQUESTED**

13 WHEREFORE, Plaintiff prays for the following relief:

- 14 1. For an order certifying this action as a class action;
- 15 2. For compensatory damages in the amount of the unpaid minimum wages for work
16 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
17 the filing of this action, as may be proven;
- 18 3. For liquidated damages in the amount equal to the unpaid minimum wage and
19 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 20 4. For compensatory damages in the amount of all unpaid wages, including overtime
21 and double-time pay, as may be proven;
- 22 5. For compensatory damages in the amount of the hourly wage made by Employees
23 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
24 years prior to the filing of this action, as may be proven;
- 25 6. For compensatory damages in the amount of the hourly wage made by Employees
26 for each day requisite rest breaks were not provided or were deficiently provided where no
27 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
28 be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

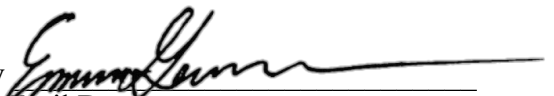
- 1 8. For penalties pursuant to Labor Code § 226.3 for Employees, as may be proven;
- 2 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
- 3 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 4 10. For restitution for unfair competition pursuant to Business & Professions Code
- 5 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 6 11. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
- 7 12. For compensatory damages in the amount of all previously unreimbursed business
- 8 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
- 9 from four (4) years prior to the original filing of this action, as may be proven;
- 10 13. For an order enjoining Defendants and their agents, servants, and employees, and
- 11 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
- 12 duties adumbrated in this Complaint;
- 13 14. For all general, special, and incidental damages as may be proven;
- 14 15. For an award of pre-judgment and post-judgment interest;
- 15 16. For an award providing for the payment of the costs of this suit;
- 16 17. For an award of attorneys' fees; and
- 17 18. For such other and further relief as this Court may deem proper and just.

18

19 DATED: August 5, 2024

D.LAW, INC.

20

21 By 

22 Emil Davtyan

23 David Yeremian

24 Roman Shkodnik

25 Emma Geesaman

26 Attorneys for Plaintiff

27 LAWRENCE BOTELHO

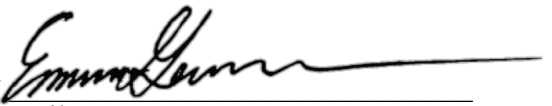
28 and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: August 5, 2024

D.LAW, INC.

By 

Emil Davtyan
David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
LAWRENCE BOTELHO
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Stephen J. Kepler
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 Laguna Niguel, CA 92677

[] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes
Natalia Bermudes