

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
EFRAIN FRANCO AYALA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

EFRAIN FRANCO AYALA, an
individual,

Plaintiff,

vs.

SKYONE FEDERAL CREDIT UNION,
an entity of unknown form; KATIA
SANTOS, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24STCV08680

COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION AS EXEMPT (WAGE ORDER NO. 4);**
- 2. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 4);**
- 3. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 4);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 4);**
- 5. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 4);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 7. FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE (Cal. Labor Code §2802);**
- 8. FAILURE TO PROVIDE DAY OF REST (Cal. Labor Code §§ 551, 552);**
- 9. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**
- 10. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.; and**

DEMAND FOR A JURY TRIAL

1 Efrain Franco Ayala (“Plaintiff”) alleges the following:

2
3 **PARTIES**

4 1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and
5 a resident of Los Angeles County, California.

6 2. Plaintiff is informed and believes, and based on that information and belief,
7 alleges, Defendant SkyOne Federal Credit Union (“SkyOne”) is, and at all times mentioned
8 herein was, an entity of unknown form, with a principal place of business at 14600 Aviation
9 Blvd., Hawthorne, California 90250. Defendant has been authorized to do business and has
10 been doing business in the County of Los Angeles.

11 3. Plaintiff alleges on information and belief that Defendant Katia Santos (“Katia”)
12 (collectively with SkyOne “Defendants”) is an individual, who at all times relevant herein, was
13 a resident of Los Angeles. Katia is an Executive Administrative Officer of SkyOne.

14 4. Starting on or about February 14, 2022 and continuing through March 4, 2024,
15 Defendant employed Plaintiff initially as a Business Development Manager and then as a
16 Business Development Officer. Plaintiff was in charge of sales and getting new business for
17 SkyOne.

18 5. Plaintiff is ignorant of the true names and capacities of the defendants sued
19 herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such
20 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
21 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
22 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
23 individual person who owned, controlled, or managed the business for which Plaintiff worked
24 and/or who directly or indirectly exercised operational control over the wages, hours, and
25 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or
26 executive positions with the remaining Defendants, and acted on behalf of the remaining
27 Defendants, which included decision-making responsibility for, and establishment of, illegal
28 payroll practices and policies for Defendants which have damaged Plaintiff and others similarly

1 situated. Therefore, DOES 1 through 100, in addition to the remaining Defendants, are
2 "employers" as a matter of law and personally liable on the causes of action alleged herein
3 pursuant to Labor Code §558, as well as other California wage and hour laws and regulations
4 as alleged herein.

5 6. Plaintiff is informed and believes and thereon alleges that at least some of the
6 Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons,
7 corporations or other business entities organized and existing under and by virtue of the laws
8 of the State of California, and are/were qualified to transact and conduct business in the State
9 of California, and did transact and conduct business in the State of California, and are thus
10 subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100
11 maintain offices, operate businesses, employ persons, and conduct business in, and illegally
12 pay employees by illegal payroll practices and policies in the County of Los Angeles.

13 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
14 herein, the named defendants and at least some of DOES 1 through 100 were the agents,
15 employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and
16 in doing the things herein alleged, were acting within the course and scope of such agency or
17 employment, and with the approval and ratification of each of the other defendants.

18 8. Plaintiff is informed and believes and thereon alleges that Defendants, and each
19 of them, directly employed or exercised control over his wages, hours, or working conditions.

20 9. Plaintiff is further informed and believes, and thereon alleges, that each of the
21 fictitiously named Defendants aided and assisted the named Defendants in committing the
22 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
23 defendant.

24 10. At all times relevant herein, each of the named defendants was the agent of the
25 other named defendants and in doing the things alleged herein, was acting within the course
26 and scope of said agency.

27 **JURISDICTION AND VENUE**

28 11. This Court has jurisdiction over this Complaint under Code of Civil Procedure

1 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
2 *Professions Code* §§ 17200 *et seq.*

3 12. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
4 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
5 herein, occurred in the County of Los Angeles and because Defendant owned and operated
6 their business in the County of Los Angeles.

7 **DEFENDANTS DID NOT PROPERLY COMPENSATE PLAINTIFF**

8 13. While employed by Defendants, Plaintiff was paid approximately \$52.00 per
9 hour. Plaintiff worked 10 hours per day, 7 days per week. He worked between 60-70 hours per
10 week.

11 14. The employment by Defendants of Plaintiff is governed by Industrial Welfare
12 Commission Wage Order 4, which covers those persons employed in the professional,
13 technical, clerical, mechanical and similar occupations.

14 15. This action is based on Defendants' willful misclassification of Plaintiff as
15 exempt, giving rise to numerous violations of California labor law.

16 16. Under California law, non-exempt employees as defined by Wage Order 4, are
17 entitled to premium wages for overtime/double time worked.

18 17. At all times relevant herein, Plaintiff routinely worked overtime/double time
19 hours such that he was due pay at overtime/double time rates. Monies for unpaid
20 overtime/double time remain due and owing.

21 18. As a result of Defendants' failure to pay Plaintiff at required overtime/double
22 time rates, the wage statements issued to him did not comply with *Labor Code* §226 and
23 California Industrial Welfare Commission ("IWC") Wage Order 4 in that they did not
24 accurately reflect all wages earned and due and owing.

25 19. As a further result of Defendants' failure to pay Plaintiff at required
26 overtime/double time rates, when Plaintiff left their employ, he was not timely paid all wages
27 due him, as required by *Labor Code* §§ 201, 202 and Wage Order 4.

28

1 20. Defendants failed to afford Plaintiff meal breaks and/or meal breaks were
2 interrupted.

3 21. Defendants failed to afford Plaintiff rest breaks.

4 22. Defendants failed to reimburse Plaintiff for his uniform expenses and
5 maintenance of the uniforms.

6 23. Defendants failed to provide Plaintiff with days of rest.

7 24. Defendants failed to provide Plaintiff with his requested employment records.

8 **FIRST CAUSE OF ACTION**

9 **WILLFUL MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR**

10 **(Wage Order 4 By Plaintiff Against all Defendants and Does 1-100)**

11 25. Plaintiff realleges and incorporates by reference all of the allegations set forth in
12 this Complaint.

13 26. SkyOne misclassified Plaintiff as an exempt employee rather than non-exempt
14 in violation of applicable Wage Order, for its own financial benefit.

15 27. The California Industrial Welfare Commission applicable Wage Order
16 identifies three exemptions to the provisions of the wage order: executive exemption,
17 administrative exemption, and professional exemption. The executive exemption at issue
18 applies to an employee: 1) whose duties and responsibility involve the management of the
19 enterprise or a subdivision thereof, 2) who customarily and regularly directs the work of two
20 or more employees, 3) who has the authority to hire or fire other employees or who can
21 suggest and recommend as to the hiring, firing, or advancement of another employee, 4) who
22 exercises discretion and independent judgment, 5) must earn a monthly salary equivalent to no
23 less than two (2) times the state minimum wage for full time employment, and 6) who is
24 primarily engaged in duties which meet the test of the exemption. *Ramirez v. Yosemite Water*
25 *Co.*, 20 Cal. 4th 785 (1999) holds that an employee meets the “primarily engaged in
26 managerial duties” requirement only when the employee spends more than half of their work
27 time on exempt duties. *Id.* at 804 n.4.

1 28. On information and belief SkyOne decided to wrongfully treat Plaintiff as an
2 exempt employee.

3 29. Plaintiff did not meet the requirements of being “salary exempt” as set forth by
4 California Labor Code § 515(a). Plaintiff was not allowed to make independent decisions.
5 Plaintiff did not manage any employees of Defendants. He did not have authority to hire or fire
6 employees. Further, Plaintiff did not have independent judgment or discretion in his job
7 position.

8 30. SkyOne thus improperly classified Plaintiff as exempt from the wage and hour
9 requirements set forth in the Labor Code and applicable Wage Order, because he did not
10 manage any employees so as to be qualified as exempt.

11 31. Because of this misclassification, Plaintiff suffered damages as a result of
12 SkyOne’s violation of the applicable Wage Order in amount according to proof.

13 32. Based on SkyOne’s conduct as alleged herein. Defendants are liable for
14 damages and statutory penalties pursuant to Labor Code §226, Labor Code §218.5 and
15 penalties pursuant to Labor Code §§203 and 206.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

18 **(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order 4 By Plaintiff Against all**
19 **Defendants and Does 1-100)**

20 33. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 34. During Plaintiff’s entire employment with Defendants, pursuant to Cal. Lab.
23 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 4, Defendants were required to
24 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
25 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
26 hours on the seventh (7th) consecutive day of any work week. Further, Defendants were
27 required to compensate Plaintiff with premium pay for all double-time performed, for hours
28

1 worked in excess of twelve (12) hours per workday and for work in excess of eight hours on
2 any seventh day of a workweek.

3 35. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
4 who had not been paid overtime compensation could recover the unpaid balance of the full
5 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
6 fees and costs of suit.

7 36. California Labor Code section 510, subdivision (a), states in relevant part:

8 Any work in excess of 12 hours in one day shall be compensated at the rate of
9 no less than twice the regular rate of pay for an employee. In addition, any work
10 in excess of eight hours on any seventh day of a workweek shall be compensated
11 at the rate of no less than twice the regular rate of pay of an employee.

12 37. California Labor Code section 1198 provides,

13 The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions
15 of labor for employees. The employment of any employee for longer hours than
16 those fixed by the order or under conditions of labor prohibited by the order is
17 unlawful.

18 38. Pursuant to IWC Wage Order No. 4-2001, § 3, "Employment beyond eight (8)
19 hours in any workday is permissible provided the employee is compensated for such overtime
20 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
21 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
22 workday..."

23 39. California Labor Code section 558 provides in pertinent part:

24 (a) Any employer or other person acting on behalf of an employer who
25 violates, or causes to be violated, a section of this chapter or any
26 provision regulating hours and days of work in any order of the
27 Industrial Welfare Commission shall be subject to a civil penalty as
28 follows:

1 (1) For any initial violation, fifty dollars (\$50) for each underpaid
2 employee for each pay period for which the employee was underpaid in
3 addition to an amount sufficient to recover underpaid wages.

4 (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was
6 underpaid in addition to an amount sufficient to recover underpaid
7 wages.

8 (3) Wages recovered pursuant to this section shall be paid to the affected
9 employee...

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

12 40. Pursuant to Cal. Labor Code §558.1:

13 (a) Any employer or other person acting on behalf of an employer, who
14 violates, or causes to be violated, any provision regulating...hours and days of
15 work in any order of the Industrial Welfare Commission, or violates, or causes
16 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
17 such violation.

18 (b) For purposes of this section, the term "other person acting on behalf of
19 an employer" is limited to a natural person who is an owner, director, officer, or
20 managing agent of the employer, and the term "managing agent" has the same
21 meaning as in subdivision (b) of Section 3294 of the Civil Code.

22 (c) Nothing in this section shall be construed to limit the definition of
23 employer under existing law.

24 41. Katia is a person acting on behalf of SkyOne and is therefore liable to Plaintiff
25 as an employer. Katia caused the laws relating to overtime/double time to be violated. Plaintiff
26 complained to Katia about the wage and hour violations, but her response was "Don't waste
27 your time asking for a raise". Thus, nothing was done to rectify the wage and hour violations.

28 42. Plaintiff worked 10 hours per day, 7 days per week. Throughout Plaintiff's
employment, Defendants failed and refused to pay and properly pay overtime/double time
compensation to Plaintiff as required by law.

1 43. Plaintiff worked approximately 10-20 hours per week of overtime/double time.
2 At times, Plaintiff was required to work in excess of 12 hours per day. However, Plaintiff was
3 never paid for the hours he worked overtime/double time. Plaintiff was not paid
4 overtime/double time that was due to him.

5 44. This practice resulted in Defendants' failure to pay Plaintiff overtime/double
6 time that he had earned.

7 45. The foregoing overtime/double time compensation is owed and unpaid. As a
8 direct and proximate result of Defendants' failure and refusal to pay overtime/double time,
9 Plaintiff suffered damages in the amount of at least \$100,000.00, according to be proof at trial.

10 46. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime/double
11 time wages against employers and those individuals acting in their behalf. Plaintiff requests
12 that this Court assess said penalty against Defendants in an amount to be proven at trial.

13 47. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
14 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
15 his attorneys' fees, costs and interest.

16 **THIRD CAUSE OF ACTION**

17 **FOR FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED**

18 **(Labor Code §§ 226.7, 512, IWC Wage Order 4 By Plaintiff Against all Defendants and**
19 **Does 1 through 100)**

20 48. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 49. California Labor Code §226.7(a) prohibits an employer from requiring an
23 employee to work during any meal period mandated by an applicable Industrial Wage Order.
24 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
25 employee to work during a meal or rest break or recovery period mandated pursuant to an
26 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
27 Commission..."
28

1 50. California Labor Code §1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 51. The applicable Wage Order provides, in relevant part: "No employer shall
4 employ any person for a work period of more than five (5) hours without a meal period of not
5 less than 30-minutes, except that when a work period of not more than six (6) hours will
6 complete the day's work the meal period may be waived by mutual consent of the employer and
7 the employee."

8 52. The applicable Wage Order further provides, in relevant part: "Unless the
9 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
10 considered an 'on duty' meal period and counted as time worked."

11 53. Section 512(a) of the California Labor Code provides, in relevant part, that:
12 An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less
14 than 30-minutes, except that if the total work period per day of the employee is
15 no more than six hours, the meal period may be waived by mutual consent of
16 both the employer and employee. An employer may not employ an employee for
17 a work period of more than 10 hours per day without providing the employee
18 with a second meal period of not less than 30-minutes, except that if the total
19 hours worked is no more than 12 hours, the second meal period may be waived
20 by mutual consent of the employer and the employee only if the first meal
21 period was not waived.

22 54. The Labor Code and Wage Order provisions cited above require California
23 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
24 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
25 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
26 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
27 the fifth hour of their shifts.
28

1 55. Defendants violated Labor Code § 512 and the applicable IWC Wage Order by
2 failing to provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff was
3 routinely not afforded uninterrupted meal breaks because he was required to answer his phone
4 and/or text messages during his meal breaks.

5 56. Pursuant to Cal. Labor Code §558.1:

6 (c) Any employer or other person acting on behalf of an employer, who
7 violates, or causes to be violated, any provision regulating...hours and days of
8 work in any order of the Industrial Welfare Commission, or violates, or causes
9 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
10 such violation.

11 (d) For purposes of this section, the term “other person acting on behalf of
12 an employer” is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term “managing agent” has the same
14 meaning as in subdivision (b) of Section 3294 of the Civil Code.

15 (c) Nothing in this section shall be construed to limit the definition of
16 employer under existing law.

17 57. Katia is a person acting on behalf of SkyOne and is therefore liable to Plaintiff
18 as an employer. Katia caused the laws relating to meal breaks to be violated. Plaintiff
19 complained to Katia about the wage and hour violations, but her response was “Don’t waste
20 your time asking for a raise”. Thus, nothing was done to rectify the wage and hour violations.

21 58. Defendants further violated the applicable IWC Wage Order and Labor Code
22 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
23 of pay for each work day that the meal period was not provided, in the amount of at least
24 \$56,000, according to proof. This amount remains owed and unpaid.

25 59. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
26 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
27 § 226.7(b).

28

1 60. As a direct and proximate result of Defendants’ unlawful conduct as alleged
2 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
3 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
4 statutory damages, attorneys’ fees and penalties and other appropriate relief due to Defendants’
5 violations of the California Labor Code and the applicable IWC Wage Orders.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS**

8 **(Labor Code §226.7– By Plaintiff Against all Defendants Does 1 through 100)**

9 61. Plaintiff realleges and incorporates by reference all of the allegations set forth in
10 this Complaint.

11 62. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
12 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
13 per four hours of work, or major fraction thereof.

14 63. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
15 fails to provide an employee with rest periods in accordance with those provisions, the
16 employer shall pay the employee one hour of pay at the employee’s regular rate of
17 compensation for each workday that the rest periods were not so provided.

18 64. Pursuant to Cal. Labor Code §558.1:

19 (e) Any employer or other person acting on behalf of an employer, who
20 violates, or causes to be violated, any provision regulating...hours and days of
21 work in any order of the Industrial Welfare Commission, or violates, or causes
22 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
23 such violation.

24 (f) For purposes of this section, the term “other person acting on behalf of
25 an employer” is limited to a natural person who is an owner, director, officer, or
26 managing agent of the employer, and the term “managing agent” has the same
27 meaning as in subdivision (b) of Section 3294 of the Civil Code.
28

1 (c) Nothing in this section shall be construed to limit the definition of
2 employer under existing law.

3 65. Katia is a person acting on behalf of SkyOne and is therefore liable to Plaintiff
4 as an employer. Katia caused the laws relating to rest breaks to be violated. Plaintiff
5 complained to Katia about the wage and hour violations, but her response was "Don't waste
6 your time asking for a raise". Thus, nothing was done to rectify the wage and hour violations.

7 66. Defendants have intentionally and improperly denied rest periods to Plaintiff in
8 violation of Labor Code § 226.7 and the applicable Wage Order.

9 67. At all times relevant hereto, Plaintiff has worked 10 or more hours daily.

10 68. At all times relevant hereto, Defendants failed to provide rest periods as required
11 by Labor Code § 226.7 and the applicable Wage Order.

12 69. By virtue of Defendants' unlawful failure to provide rest periods to the Plaintiff,
13 Plaintiff has suffered, and will continue to suffer, damages the amount of at least \$56,000.00,
14 according to proof at trial.

15 **FIFTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **(Labor Code §226 By Plaintiff Against SkyOne and Does 1 through 100)**

18 70. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 this Complaint.

20 71. At all times relevant hereto, SkyOne failed to issue payrolls statements to
21 Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did
22 not properly and accurately itemize the number of hours Plaintiff worked at the effective
23 regular rates of pay and the effective overtime/double time rates of pay and for meal/rest breaks
24 not afforded and days of rest.

25 72. SkyOne knowingly and intentionally failed to comply with *Labor Code* §226(a),
26 causing damage to Plaintiff. These damages, including but not limited to, costs expended
27 calculating the actual hours worked and the amount of employment taxes which were not
28

properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

73. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus attorney fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§201-203 By Plaintiff Against Defendant SkyOne and Does 1 through 100)

74. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

75. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

76. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

77. Plaintiff was discharged from SkyOne's employ and SkyOne willfully failed to pay Plaintiff overtime/double time, for meal/rest breaks not afforded and for days of rest.

78. Defendants terminated Plaintiff on March 4, 2024, yet failed to pay him wages due to him.

79. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day he was not timely paid, not to exceed 30 days' wages.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE

(Cal. Labor Code §2802 By Plaintiff Against all Defendant SkyOne and Does 1 through 100)

1 80. Plaintiff realleges and incorporates by reference all of the allegations set forth in
2 this Complaint.

3 81. Under California law, if an employer requires non-exempt employees to wear a
4 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
5 §2802.

6 82. In addition to the cost of the uniform, the employer must provide non-exempt
7 employees with reasonable maintenance of the uniforms. The employer can either maintain the
8 uniform itself, or pay the employee a weekly maintenance allowance.

9 83. An employer may never impose a financial burden on employees, with respect
10 to purchasing or maintaining clothing, which would reduce the employees' wage rate below the
11 minimum wage.

12 84. Here, SkyOne required Plaintiff to purchase uniforms, such as polo shirts and
13 hats with the company logo. Further, SkyOne does not maintain the uniforms. Plaintiff was
14 required to pay for the maintenance and cleaning himself.

15 85. SkyOne failed to purchase and maintain the uniform, nor pay Plaintiff a weekly
16 maintenance allowance.

17 86. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
18 entitled to recovery from SkyOne for reimbursement of necessary expenditures including
19 interest and attorneys' fees.

20 87. As a proximate result of the aforementioned violations of Labor Code § 2802,
21 Plaintiff has been damaged in an amount according to proof at the time of trial.

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE DAY OF REST**

24 **(Cal. Labor Code §§ 551, 552 By Plaintiff Against all Defendants and Does 1 through 100)**

25 88. Plaintiff realleges and incorporates by reference all of the allegations set forth in
26 this Complaint.

27 89. Labor Code section 551 states: "Every person employed in any occupation of
28 labor is entitled to one day's rest therefrom in seven."

90. Labor Code section 552 states in part: “No employer of labor shall cause his employees to work more than six days in seven...”

91. Wage Order No. 4 requires employers to pay employees one and one-half times their regular rate of pay for the first eight hours worked on the seventh consecutive day of work in any workweek, and twice their regular rate for hours worked in excess of eight on the seventh day.

92. Plaintiff worked 7 days per week because SkyOne was understaffed.

93. Defendants knowingly and intentionally failed to pay Plaintiff premium pay for working seven consecutive days as required by Labor Code sections 551 and 552 and Wage Order 4.

94. As a direct and proximate result of Defendants' conduct as alleged herein, Plaintiff has suffered monetary damages in an amount equal to his unpaid wages for work performed during seven consecutive work days, pursuant to Labor Code sections 551 and 552 and Wage Order 4, plus interest thereon pursuant to Labor Code 218.6.

95. Plaintiff further is entitled to recover from Defendants additional sums as a penalty, pursuant to Labor Code section 558 equal to fifty dollars (\$50) per unpaid pay period for Defendant's initial violation, and one hundred dollars (\$100) per unpaid pay period for each subsequent violation, in addition to the underpaid wages from each pay period.

96. In addition, Plaintiff has retained the services of an attorney to maintain and prosecute this action and these attorneys are entitled to recover fees and costs incurred on Plaintiff's behalf pursuant to Labor Code section 218.5.

NINTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Cal. Labor Code §1198.5 By Plaintiff Against SkyOne and Does 1 through 100)

97. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

98. California Labor Code Section 1198.5 provides:

1 (a) Every current and former employee, or his or her representative, has the right
2 to inspect and receive a copy of the personnel records that the employer
3 maintains relating to the employee's performance or to any grievance concerning
4 the employee.

5 (b) The employer shall make the contents of those personnel records available
6 for inspection to the current or former employee, or his or her representative, at
7 reasonable intervals and at reasonable times, but not later than 30 calendar days
8 from the date the employer receives a written request, unless the current or
9 former employee, or his or her representative, and the employer agree in writing
10 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
11 date does not exceed 35 calendar days from the employer's receipt of the written
12 request to inspect the records. Upon a written request from a current or former
13 employee, or his or her representative, the employer shall also provide a copy of
14 the personnel records,... later than 30 calendar days from the date the employer
15 receives the request...

16 (k) If an employer fails to permit a current or former employee, or his or her
17 representative, to inspect or copy personnel records within the times specified I
18 this section... the current or former employee may recover a penalty of seven
19 hundred fifty dollars (\$750) from the employer.

20 (l) A current or former employee may also bring an action for injunctive relief
21 to obtain compliance with this section, and may recover costs and reasonable
22 attorney's fees in such an action.

23 99. Additionally, pursuant to Wage Order 4, at section 7 re: Records, employers are
24 required to keep accurate payroll records on each employee, and such records must be made
25 readily available for inspection by the employee upon reasonable request. The employer must
26 also maintain accurate production records.

27 100. On or about April 3, 2024, Plaintiff's counsel issued a written request to SkyOne
28 for copies of his personnel records.

101. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and SkyOne did not enter into an agreement to enlarge the time for SkyOne's compliance, and SkyOne has failed and refused to permit Plaintiff copies of his records.

102. As a direct result and consequence of SkyOne's failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating SkyOne's compliance. Plaintiff has suffered and will suffer harm as a result of SkyOne's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon SkyOne's violation of §1198.5.

TENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION

**(Business & Professions Code §§ 17200 et seq. By Plaintiff Against all Defendants and
Does 1 through 100)**

103. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

104. *Business & Professions Code* §§ 17200 *et seq.* prohibit acts of unfair competition, which mean and include “unlawful and unfair business practices.”

105. Defendants’ conduct as alleged herein has been and continues to be unfair, unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff is a “person” within the meaning of *Business and Professions Code* § 17204 and therefore has standing to bring this suit for restitution.

106. The prompt payment of overtime/double time, affording of meal/rest breaks, providing days of rest and a uniform maintenance allowance, are fundamental public policies of California. It also is the public policy of California to enforce minimum labor standards to ensure that employees are not required to or permitted to work under substandard and unlawful conditions and to protect those employers who comply with the law from losing competitive advantage to other employers who fail to comply with labor standards and requirements.

1 107. Through the conduct alleged herein, Defendants acted contrary to these public
2 policies and have thus engaged in unlawful and/or unfair business practices in violation of
3 *Business & Professions Code* §§ 17200 *et seq.*, depriving Plaintiff of the rights, benefits and
4 privileges guaranteed to employees under California law.

5 108. Defendants regularly and routinely violated the following statutes and
6 regulations with respect to Plaintiff:
7

- 8 (a) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No.
9 4 as amended (failure to pay overtime/double time);
- 10 (b) *Labor Code* §226 (failure to afford meal breaks);
- 11 (c) *Labor Code* §226 (failure to afford rest breaks);
- 12 (d) *Labor Code* § 226 (failure to provide accurate wage statements to
13 employees at the time of payment of wages);
- 14 (e) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
- 15 (f) *Labor Code* § 2802 (failure to pay uniform maintenance allowance);
- 16 (g) *Labor Code* §§ 551, 552 (failure to provide day of rest); and
- 17 (h) *Labor Code* §1198.5 (failure to allow inspection of employment
18 records).

19 109. By engaging in these business practices, which are unfair business practices
20 within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendants harmed
21 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code*
22 § 17203, Plaintiff is entitled to obtain restitution of these funds.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
25 and against Defendants, and each of them, as follows:

- 26 1. For compensatory damages in the amount of unpaid overtime/double time due to
27 Plaintiff, in the amount of at least \$100,000, according to proof;

2. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each workday that a meal and/or rest period was not provided;
3. For compensatory damages in the amount of Plaintiff's uniform maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
4. For payment of unpaid wages in accordance with California labor and employment law;
5. For an award of consequential damages in Plaintiff's favor and against Defendants, in an amount to be proven at trial;
6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
7. Pursuant to Labor Code § 203, for an additional sum according to proof equal of up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;
8. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
9. Premium pay for failure to provide a day of rest;
10. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
11. For prejudgment interest accrued on all due and unpaid overtime/double time from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;
12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to proof;
13. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 218.6, 1198.5(1), 2802 and/or Cal. Code of Civ. Proc. §1021.5;

1 14. For an award of restitution of wages to Plaintiff in an amount equal to the
2 amount of wages owed and unpaid, according to proof;

3 15. For injunctive relief ordering the continuing unfair business acts and practices to
4 cease, as the Court deems just and proper;

5 16. For other injunctive relief ordering Defendants to notify Plaintiff that he has not
6 been paid the proper amounts in accordance with California law;

7 17. For injunctive relief requiring Defendants to comply with Labor Code
8 1198.5(b)(1);

9 18. For punitive and exemplary damages in a sum to be determined at trial; and

10 19. For such other and further relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff Efrain Franco Ayala hereby respectfully requests a trial by jury for all claims
13 and issues raised in his Complaint that may be entitled to a jury trial.

14
15 LIPELES LAW GROUP, APC

16 Date: April 5, 2024

17
18 By: 

19 _____
20 Kevin A. Lipeles
21 Attorneys for Plaintiff
22 Efrain Franco Ayala
23
24
25
26
27
28