

ELECTRONICALLY FILED
 Superior Court of California,
 County of Madera
06/06/2024 at 01:39:18 PM
 By: Danyele Cerda, Deputy Clerk

EMPLOYMENT RIGHTS LAWYERS, APC
 Amir H. Seyedfarshi, Esq. (SBN 301656)
amir@employmentrightslawyers.com
 6380 Wilshire Blvd., Suite 1602
 Los Angeles, CA 90048
 Telephone: (424) 777-0964

LAW OFFICE OF TATIANA HERNÁNDEZ, P.C.
 Tatiana Hernández, Esq. (SBN 255322)
tatiana@thlawpc.com
 315 South Beverly Drive, Suite 504
 Beverly Hills, California 90212
 Telephone: (213) 909-4248
 Facsimile: (310) 388-0639

Attorneys for Plaintiff and all similarly situated individuals

MCV092175

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF MADERA**

RUBEN CARILLO, an individual, on behalf
 of himself and all others similarly situated,

Plaintiff,

v.

CARRIS REELS OF CALIFORNIA, INC., a
 California corporation, and DOES 1-50,
 inclusive,

Defendant.

**PLAINTIFF'S CLASS ACTION COMPLAINT
 FOR:**

1. **Failure to Provide Compliant Meal Breaks and/or Pay Premiums, (Labor Code §§ 226.7, 512(a), 516, & 1198);**
2. **Failure to Provide Rest Breaks and/or Pay Premiums, (Labor Code §§ 226.7, 516, & 1198);**
3. **Failure to Pay Minimum Wages, (Labor Code §§ 1194 & 1197);**
4. **Failure to Pay Overtime Wages, (Labor Code §§ 510 & 1198);**
5. **Penalties for Failure to Pay Timely Wages, (Labor Code §§ 204 & 210);**
6. **Failure to Provide and Maintain Accurate Itemized Wage Statements, (Labor Code §§ 226(a) & 1174(d));**
7. **Penalties for Failure to Pay All Wages Due Upon Termination, (Labor Code §§ 201, 202, & 203);**
8. **Failure to Pay for Sick Days, (Labor Code § 246(a), *et seq.*); and**
9. **Unfair Business Practices in Violation of Business & Professions Code (§ 17200 *et seq.*)**

DEMAND FOR JURY TRIAL

1 Plaintiff RUBEN CARILLO (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby complains and alleges as follows:

3 **NATURE OF ACTION**

4 1. This class action is brought by Plaintiff on behalf of himself and all other similarly
5 situated current and former employees against Defendant CARRIS REELS OF CALIFORNIA, INC.
6 and DOES 1 through 50 (collectively, “Defendant”) on a class action basis.

7 2. As described in further detail below, during the course of his employment, Plaintiff was
8 subjected to unlawful conduct by Defendant including, *inter alia*, violations of California’s wage and
9 hour laws and the Industrial Welfare Commission (“IWC”)’s applicable wage orders.

10 **OVERVIEW OF CLAIMS**

11 3. Plaintiff brings this action as a class action pursuant to Code of Civil Procedure (“CCP”) section 382
12 against Defendant for its violations of the Labor Code, including but not limited to sections
13 201, 202, 204, 226(a), 226.7, 246, 246(a), 510, 512(a), 516, 1174(d) 1194, 1197, and 1198, for: (1)
14 failure to provide timely, complete, duty-free meal breaks and/or pay premiums in lieu thereof; (2)
15 failure to provide timely, complete, duty-free rest breaks and/or pay premiums in lieu thereof; (3)
16 failure to pay all minimum wages owed; (4) failure to pay all overtime wages owed; (5) failure to pay
17 timely wages; (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages due
18 upon termination; and (8) failure to compensate for sick days. Plaintiff also brings a claim for violation
19 of California’s Unlawful Competition Law, Business and Professions Code section 17200 *et seq.*
20 (“UCL”).

21 4. The “Class Period” is designated as the period from four years prior to the filing of this
22 action through the date of Class certification by the Court. Defendant’s violations of California’s wage
23 and hour laws and unfair competition laws, as described more fully below, have been ongoing
24 throughout the Class Period. Plaintiff reserves the right to amend this complaint to reflect a different
25 Class Period as further discovery is conducted.

26 **JURISDICTION AND VENUE**

27 5. This Court has jurisdiction over this action pursuant to CCP section 410.10 because
28 Plaintiff’s damages exceed the jurisdictional minimum of this Court. At all relevant times, Defendant

1 employed individuals who lived and/or worked in Madera County. Defendant's headquarters and
2 principal place of business is located at 2100 W. Almond Ave., Madera, California 93637. Defendant
3 was and is registered and authorized to conduct business, and does conduct business, within the State of
4 California, including in Madera County. Thus, this Court further has jurisdiction over Defendant
5 because Defendant has obtained the benefits of the laws of the State of California. Moreover, Plaintiff
6 asserts no claims arising under federal law. Rather, Plaintiff brings this action based solely on, and only
7 arising from, California law, including, *inter alia*, California's Labor Code.

8
9 6. The claims of the Class Members (as defined below) are also based solely on California
10 law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is
11 less than \$5 million. Therefore, jurisdiction is appropriate in Madera County Superior Court.

12 7. Venue is proper in this Court, pursuant to CCP section 395.5, because the incidents
13 complained of occurred at the location of Defendant's principal place of business, which is located
14 within Madera County. Plaintiff and the Class resided in and/or performed work for Defendant within
15 in Madera County during the Class Period.

16 **THE PARTIES**

17
18 8. At all relevant times, Plaintiff was and is a resident of Madera, California, which is
19 located in Madera County, California. Plaintiff was hired by Defendant on or around December 19,
20 2022 to work as an Assembly Worker as an hourly-paid, non-exempt employee during the Class Period.

21 9. By way of this class action, Plaintiff also seeks to represent the following subclasses of
22 individuals:

- 23
24 (a) All non-exempt individuals who were employed by Defendant in the State of
25 California during the Class Period ("Class Members" or the "Class");
26 (b) All Class Members who worked at least 6 hours in a shift for Defendant during
27 the Class Period ("Meal Break Subclass");
28 (c) All Class Members who worked more than 3.51 hours in a shift for Defendant

during the Class Period (“Rest Break Subclass”);

- (d) All Class Members who were required to: (a) work in excess of eight (8) hours per day; (b) work in excess of forty (40) hours per week; and/or (c) work any hours on the seventh (7th) consecutive day of work in any one workweek during the Class Period (“Minimum Wage Subclass” and/or “Overtime Wage Subclass”);
- (e) All Class Members who were not paid all wages at the time they were owed during the Class Period (“Untimely Wage Subclass”);
- (f) All Class Members who were issued at least one wage statement from Defendant during the Class Period (“Wage Statement Subclass”);
- (g) All Class Members whose employment with Defendant ended during the Class Period (“Waiting Time Penalty Subclass”); and
- (h) All Class Members who have been employed by Defendant during the Class Period who worked at least 30 days since the commencement of their employment and who were denied paid sick leave (“Sick Pay Subclass”).

10. Plaintiff and the Class consist of identifiable, current and/or formerly similarly situated persons who worked for Defendant in California during the Class Period as non-exempt, hourly-paid employees.

11. Defendant is a California corporation which owns, manages, and/or operates production company specializing in the production of wood reels, plastic reels, and recycled reels for wire and cable. Defendant’s business is located at 2100 W. Almond Ave., Madera, California 93637, within Madera County, California. At all relevant times, Defendant was and is registered and authorized to conduct business, and did and does conduct business, within the State of California, including in Madera County. To operate its business, Defendant employed and/or employs hourly-paid, non-exempt individuals, including Plaintiff and the Class during the Class Period.

1 12. DOES 1 through 50 (“DOES Defendants”) are sued herein under fictitious names
2 pursuant to CCP section 474. The identity of the DOES Defendants is unknown to Plaintiff as Plaintiff
3 does not, at this time, know the true names or capacities of the DOES Defendants. Plaintiff will seek
4 leave of the Court to amend this Complaint to allege their true names and capacities once ascertained.
5 Plaintiff is informed and believes, and thereon alleges, that each DOES Defendant is highly responsible
6 in some manner for the events and happenings referred to herein, and legally caused the injuries and
7 damages alleged in this Complaint.
8

9 13. Plaintiff is informed and believes and thereon alleges, that each and every Defendant,
10 including the DOES Defendants, was the authorized agent, principal, partner, joint venturer and/or
11 guarantor, actual or ostensible, of each and every other Defendant; and that each and every Defendant
12 had full authority to do as alleged herein, unless alleged otherwise. Furthermore, each and every
13 Defendant was operating within the course and scope of their agency, or in a principal, partner, joint
14 venturer, and/or guarantor, actual or ostensible, relationship with each and every other Defendant
15 during the course of events described herein, unless alleged otherwise.
16

17 **CLASS ACTION ALLEGATIONS**

18 14. Plaintiff brings this action, on behalf of himself the Class, as a class action pursuant to
19 CCP section 382. Plaintiff also seeks to represent the following subclasses, as defined above: (a) the
20 Meal Break Subclass; (b) the Rest Break Subclass; (c) the Minimum Wage Subclass; (d) the Overtime
21 Wage Subclass; (e) the Untimely Wage Subclass; (f) the Waiting Time Penalty Subclass; (g) the Wage
22 Statement Subclass; and (h) the Sick Pay Subclass.
23

24 15. This action has been brought and may properly be maintained as a class action under
25 CCP section 382 because there is a well-defined community of interest in the litigation, the proposed
26 Class is easily ascertainable, and Plaintiff is a proper representative of the Class:

- 27 (a) Numerosity: The potential members of the Class as defined are so numerous that
28 joinder of all the members of the Class is impracticable. While the precise

1 number of Class Members has not been determined at this time, Plaintiff is
2 informed and believes that Defendant has, on average, at any one time during the
3 Class Period, employed over 100 Class Members as non-exempt employees who
4 were subject to Defendant's unlawful policies. Due to turnover, the total number
5 of Class Members is estimated to be more than 300. The Class Members are
6 dispersed throughout California. Joinder of all members of the proposed classes
7 is therefore not practicable.

8
9 (b) Commonality: There are questions of law and fact common to Plaintiff and the
10 Class that predominate over any questions affecting only individual members of
11 the Class. These common questions of law and fact include, without limitation:

- 12 i. Whether Defendant violated Labor Code sections 226.7 and 512 and
13 section 11 of the applicable IWC wage order by failing to provide timely,
14 complete, and duty-free meal periods to Plaintiff and the Meal Break
15 Subclass in California during the Class Period;
- 16 ii. Whether Defendant violated Labor Code section 226.7 by failing to
17 provide one hour of premium pay to each member of the Meal Break
18 Subclass for each day that a timely, complete, and duty-free meal period
19 was not provided in California during the Class Period;
- 20 iii. Whether Defendant violated Labor Code section 226.7 and section 12 of
21 the applicable IWC wage order by failing to provide timely, complete,
22 and duty-free rest periods to Plaintiff and the Rest Break Subclass in
23 California during the Class Period;
- 24 iv. Whether Defendant violated Labor Code section 226.7 by failing to
25 provide one hour of premium pay to the Rest Break Subclass for each day
26 that a timely, complete, and duty-free rest period was not provided in
27
28

California during the Class Period;

v. Whether Defendant violated Labor Code sections 1194 and 1197 by failing to pay the Minimum Wage Subclass all minimum wages owed in California during the Class Period;

vi. Whether Defendant violated Labor Code sections 510 and 1198, by failing to pay the Overtime Wage Subclass all overtime wages owed in California during the Class Period;

vii. Whether Defendant violated Labor Code section 204 by failing to pay the Untimely Wage Subclass all wages owed in a timely fashion in California during the Class Period;

viii. Whether Defendant violated Labor Code Section 226(a) by failing to provide the Wage Statement Subclass accurate, itemized wage statements in California during the Class Period;

ix. Whether Defendant failed to maintain accurate, itemized wage statements in violation of Labor Code section 1174(d) during the Class Period;

x. Whether Defendant violated sections 201 and/or 202 of the Labor Code by failing to pay members of the Waiting Time Penalty Subclass for all wages due to them (including all unpaid meal and rest break premiums, minimum wages, and overtime wages) upon their separation of employment from Defendant during the Class Period;

xi. Whether Defendants violated section 246 of the Labor code by failing to compensate the Sick Pay Subclass for sick leave during the Class Period;

xii. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members; and

xiii. The nature and extent of class-wide damages.

- 1 (c) Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff
2 and the Class sustained injuries and damages, and were deprived of property
3 rightly belonging to them, arising out of and caused by Defendant's common
4 course of conduct in violation of law as alleged herein, in similar ways and for
5 the same types of unpaid wages;
- 6 (d) Adequacy of Representation: Plaintiff is a member of the Class and will fairly
7 and adequately represent and protect the interests of the Class and Class
8 Members. Plaintiff's interests do not conflict with those of Class and Class
9 Members. Counsel who represents Plaintiff is competent and experienced in
10 litigating large wage and hour class actions, including numerous cases virtually
11 identical to this one (i.e., wage and hour class action cases), and other
12 employment class actions, and will devote sufficient time and resources to the
13 case and otherwise adequately represent the Class and Class Members;
- 14 (e) Superiority of Class Action: A class action is superior to other available means
15 for the fair and efficient adjudication of this controversy. Individual joinder of all
16 Class Members is not practicable, and questions of law and fact common to the
17 Class predominate over any questions affecting only individual members of the
18 Class. Each Class Member has been damaged or may be damaged in the future
19 by reason of Defendant's unlawful policies and/or practices. Certification of this
20 case as a class action will allow those similarly situated persons to litigate their
21 claims in the manner that is most efficient and economical for the parties and the
22 judicial system. Certifying this case as a class action is superior because it allows
23 for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed
24 by maintaining its unlawful break and compensation policies and will thereby
25 effectuate California's strong public policy of protecting employees from
26
27
28

1 deprivation or offsetting of compensation earned in their employment. If this
2 action is not certified as a class action, it will be impossible as a practical matter
3 for many or most Class Members to bring individual actions to recover monies
4 unlawfully withheld from their lawful compensation due from Defendant, due to
5 the relatively small amounts of such individual recoveries relative to the costs
6 and burdens of litigation.

7
8 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9 16. Plaintiff was hired by Defendant to work as a non-exempt, hourly-paid employee on or
10 around December 19, 2022 to work as an Assembly Worker.

11 17. During the Class Period, Plaintiff and the Class worked for Defendant as non-exempt,
12 hourly employees, as those terms are defined within the Labor Code and the applicable IWC wage
13 order. During the Class Period, Defendant was and is an employer, as that term is defined within the
14 Labor Code and the applicable wage order.

15 18. During the Class Period, Plaintiff and the Class were typically scheduled to work five
16 days a week and eight hours per shift, typically scheduled from 6:00 a.m. and ending at approximately
17 3:30 p.m.

18 19. During the Class Period, Plaintiff and the Class were continuously denied to take
19 uninterrupted, duty-free, 30-minute meal breaks when they worked shifts of five hours or more. For
20 example, they were only allowed to commence their meal break once Defendant rang a bell and
21 Defendant would often ring the bell late, even though their meal breaks were supposed to begin at
22 11:00 a.m. and end at 11:30 a.m. each day. This resulted in a short meal, less than 30 minutes during
23 the majority of the shifts.

24 20. During the Class Period, Plaintiff and the Class were also continuously denied the
25 opportunity to take uninterrupted, duty free, 10-minute rest breaks every four hours of work or major
26 fraction thereof.
27
28

1 21. Despite not receiving legally-compliant meal or rest breaks, Defendant did not pay
2 Plaintiff and the Class any meal or rest break premium wages for every day that they did not receive
3 timely, uninterrupted, and/or complete meal or rest breaks.

4 22. Plaintiff and the Class were not always compensated for all time they were subject to
5 Defendant's control. For example, at the start and end of their shifts, they were required to wait in line
6 in order to clock in and/or out. This process took anywhere from 2 to 4 minutes of waiting time.

7 23. As a result of the foregoing, this, at times, caused Plaintiff and the Minimum Wage
8 Subclass to receive less than the full minimum wages they were owed because, if all hours spent under
9 Defendant's control were actually recorded, then the hourly rates of Plaintiff and the Minimum Wage
10 Subclass would come out to be less than minimum wage.

11 24. At times, this additional work time also resulted in Plaintiff and the Overtime Wage
12 Subclass working more than eight hours in one day and/or 40 hours in one week. Despite this, Plaintiff
13 and the Overtime Wage Subclass were not compensated for these hours on these occasions by
14 Defendant, nor were they paid at an overtime rate on occasions when they worked more than eight
15 hours in one day and/or forty hours in one week.

16 25. At the time of their termination, Defendant never paid Plaintiff and the Class all wages
17 owed, including all premium wages for days that they did not receive legally-compliant meal and/or
18 rest breaks; all minimum wages owed; and all overtime wages owed.

19
20
21 **FIRST CAUSE OF ACTION**

22 **Failure to Provide Compliant Meal Breaks and/or Pay Premiums**
23 **in Violation of Labor Code §§ 226.7, 512(a), 516, and 1198**
24 **and Section 11 of the Applicable Wage Order**

25 26. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
26 the preceding paragraphs.

27 27. Labor Code section 516 provides that the IWC may adopt working condition orders with
28 respect to meal periods for any workers in California.

1 28. Labor Code section 1198 provides that the standard conditions of labor fixed by the
2 commission shall be the standard conditions of labor for employees.

3 29. Pursuant to Labor Code section 512 and section 11 of the applicable wage order, no
4 employer shall employ any person for a work period of more than five (5) hours without providing a
5 meal period of not less than thirty (30) minutes. *Id.* at subd. (a).

6 30. Labor Code section 226.7(a) provides that no employer shall require an employee to
7 work during a meal period mandated by an applicable statute, regulation, standard, or order of the
8 IWC.
9

10 31. Section 11 of the applicable wage order further provides that “[i]f an employer fails to
11 provide an employee a meal period in accordance with the applicable provisions of this order, the
12 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
13 each workday that the meal period is not provided.”

14 32. In other words, if an employer fails to provide a legally compliant, duty-free meal
15 period, the employee is entitled to one hour of “premium pay,” or an additional hour of pay at the
16 employee’s regular rate of compensation for each workday that the meal period was not provided. Lab.
17 Code § 226.7(c).
18

19 33. Here, Plaintiff and the Meal Break Subclass were not authorized nor permitted to take
20 legally compliant meal breaks due to the fact that Defendant was often late to alert them of their break
21 time and/or because they frequently had a heavy workload. Accordingly, they could not take an
22 uninterrupted, duty-free meal break. Despite the foregoing, Defendant never paid any meal period
23 premiums to the Meal Break Subclass for every day in which they did not receive a meal break in
24 compliance with the Labor Code and section 11 of the applicable wage order.
25

26 34. As a result of the Defendant’s policies and practices, the Meal Break Subclass is entitled
27 to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one
28 additional hour of pay at their regular rate of compensation for each day in which Defendant failed to

1 authorize and permit them to take meal periods in compliance with the Labor Code and section 11 of
2 the applicable wage order. Plaintiff, on behalf of himself and the Meal Break Subclass, also seeks civil
3 penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 204, 210, 218.5,
4 218.6; section 20 of the applicable wage order; and CCP section 1021.5 for Defendant's unlawful
5 conduct.

6
7 **SECOND CAUSE OF ACTION**
8 **Failure to Provide Compliant Rest Breaks and/or Pay Premiums**
9 **in Violation of Labor Code §§ 226.7, 516, and 1198**
10 **and Section 12 of the Applicable Wage Order**

11 35. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
12 the preceding paragraphs.

13 36. Labor Code section 516 provides that the IWC may adopt working condition orders with
14 respect to rest breaks for any workers in California.

15 37. Labor Code section 1198 provides that the standard conditions of labor fixed by the
16 commission shall be the standard conditions of labor for employees.

17 38. Labor Code section 226.7(a) provides that no employer shall require an employee to
18 work during a rest period mandated by an applicable statute, regulation, standard, or order of the IWC.

19 39. Pursuant to section 12 of the applicable wage order, an employer is required to authorize
20 and permit its employees to take a rest period of not less than ten (10) minutes for every four hours
21 worked or a "major fraction thereof." The Division of Labor Standards Enforcement ("DLSE") has
22 interpreted the phrase "major fraction thereof", as applied to a four-hour period, to mean any amount of
23 time in excess of two hours—i.e., any fraction greater than half. *Brinker Restaurant Corp. v. Superior*
24 *Court* (2012) 53 Cal. 4th 1004, 1029, citing Dept. Industrial Relations, DLSE Opn. Letter No.
25 1999.02.16 (Feb. 16, 1999) p. 1.

26 40. Section 12 of the applicable wage order provides that: "[i]f an employer fails to provide
27 an employee a rest period in accordance with the applicable provisions of this Order, the employer
28

1 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
2 workday that the rest period is not provided."

3 41. In other words, if an employer fails to provide a legally compliant, duty-free rest break,
4 the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's
5 regular rate of compensation for each workday that the rest break was not provided. Lab. Code §
6 226.7(c).

7 42. Here, Plaintiff and the Rest Break Subclass were not authorized nor permitted to take
8 legally compliant rest breaks due to the fact that Defendant was often understaffed, because they
9 frequently had a heavy workload, and/or because there were no other coworkers available to cover them
10 during their shifts. Accordingly, they could not take an uninterrupted, duty-free rest break when they
11 were entitled to take them.
12

13 43. Despite the foregoing, Defendant never paid any rest break premiums to the Rest Break
14 Subclass for every day in which they did not receive a rest break in compliance with the Labor Code
15 and section 12 of the applicable wage order.
16

17 44. As a result of the Defendant's policies and practices, the Rest Break Subclass is entitled
18 to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one
19 additional hour of pay at their regular rate of compensation for each day in which Defendant failed to
20 authorize and permit them to take rest breaks in compliance with the Labor Code and section 12 of the
21 applicable wage order. Plaintiff, on behalf of himself and the Rest Break Subclass, also seeks civil
22 penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5,
23 218.6; section 20 of the applicable wage order; and CCP section 1021.5 for Defendant's unlawful
24 conduct.
25

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
**Failure to Pay All Minimum Wages Owed
in Violation of Labor Code §§ 1194 and 1197
and Section 4 of the Applicable Wage Order**

45. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

46. Pursuant to Labor Code section 1194, employers must pay employees no less than minimum wage for each hour worked. *See also* Lab. Code § 1197 and section 4 of the applicable wage order.

47. Pursuant to Labor Code section 1194(a), any employee receiving less than the legal minimum wage compensation is entitled to recover in a civil action, the amount of unpaid wages, attorneys' fees, and costs of suit.

48. Labor Code section 1182.12 sets forth the minimum wage for all industries who employ at least 26 employees. *Id.* at subd. (a). In 2018, the minimum wage rate in California was eleven dollars (\$11.00) per hour. In 2019, the minimum wage rate in California was twelve dollars (\$12.00) per hour. In 2020, the minimum wage rate in California was thirteen dollars (\$13.00) per hour. In 2021, the minimum wage rate in California was fourteen dollars (\$14.00) per hour. In 2022, the minimum wage rate in California was raised to fifteen dollars (\$15.00) per hour. Plaintiff is informed and believes Defendant employed more than twenty-six (26) employees.

49. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

50. Employees must be paid for all "hours worked." "Hours worked" means "the time during which an employee is subject to the control of an employer and includes all the time the

1 employee is suffered or permitted to work, whether or not required to do so.” See section 2(K) of the
2 applicable wage order; see also *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. Being
3 subject to the control of the employer includes all time the employee is suffered or permitted to work,
4 and this term encompasses a meaning distinct from merely “working.” *Morillion v. Royal Packing Co.*
5 (2000) 22 Cal.4th 575, 584.

6 51. Notably, there is no *de minimis* defense for such time. See *Troester v. Starbucks Corp.*
7 (2018), 5 Cal.5th 829 (the California Supreme Court held that, in light of new technologies allowing
8 time-tracking with specificity, the *de minimis* principle was not applicable in the context of an alleged
9 policy requiring employees to work minutes off the clock routinely).

10 52. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
11 fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
12 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
13 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
14 underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty
15 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
16 regardless of whether the initial violation is intentionally committed.

17 53. Here, Plaintiff and the Minimum Wage Subclass were not compensated for all time they
18 were subject to Defendant’s control, including but not limited to the time that they were required to
19 wait in line in order to clock in and/or out—a process that took anywhere from 2 to 4 minutes.

20 54. As a result of the foregoing, this caused Plaintiff and the Minimum Wage Subclass to
21 receive less than the full minimum wages they were owed because, if all hours spent under Defendant’s
22 control were actually recorded, then the hourly rates of Plaintiff and the Minimum Wage Subclass
23 would come out to be less than minimum wage.

24 55. As a result of the unlawful acts of Defendant, Plaintiff and the Minimum Wage Subclass
25 are entitled to recover unpaid wages amounting to the difference between the wages actually paid by
26
27
28

1 Defendant and the wages Plaintiff and the Minimum Wage Subclass should have been paid, according
2 to the minimum wage rate required by law, in an amount to be proven at trial.

3 56. Additionally, Labor Code section 1194.2 authorizes employees to recover liquidated
4 damages for violations of Labor Code section 1194. Accordingly, Plaintiff and the Minimum Wage
5 Subclass are entitled to recover liquidated damages for violations of Labor Code section 1197.1. Based
6 upon these same factual allegations as outlined above, Plaintiff and the Minimum Wage Subclass are
7 entitled to penalties under Labor Code section 1199.
8

9 57. As a result of the Defendant's policies and practices, the Minimum Wage Subclass is
10 entitled to recover damages pursuant to Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and
11 1199 in an amount according to proof at trial. Plaintiff, on behalf of himself and the Minimum Wage
12 Subclass, also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code
13 sections 203, 210, 218.5, 218.6; section 20 of the applicable wage order; and CCP section 1021.5 for
14 Defendant's unlawful conduct.
15

16 **FOURTH CAUSE OF ACTION**
17 **Failure to Pay All Overtime Wages Owed**
18 **in Violation of Labor Code §§ 510 and 1198**
19 **and Section 3 of the Applicable Wage Order**

20 58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
21 the preceding paragraphs.

22 59. Labor Code section 510 provides that any work in excess of eight hours on any day, 40
23 hours in one week, as well as all hours worked on the seventh consecutive day of a workweek, shall be
24 compensated at the rate of no less than 1.5 times the regular rate of pay. *See also* Lab. Code § 1198 and
25 section 3(A) of the applicable IWC wage order.

26 60. As set forth in more detail above, Defendant failed to compensate Plaintiff and the
27 Overtime Wage Subclass for all hours worked and all time they were subject to Defendant's control,
28 including but not limited to the time that they were required to wait in line in order to clock in and/or

1 out—a process that took anywhere from 2 to 4 minutes.

2 61. At times, this additional work time resulted in Plaintiff and the Overtime Wage Subclass
3 working more than eight hours in one day and/or 40 hours in one week. Despite this, Plaintiff and the
4 Overtime Wage Subclass were not compensated for these hours on these occasions by Defendant, nor
5 were they paid at an overtime rate on occasions when this resulted in them working more than eight
6 hours in one day and/or forty hours in one week, in violation of Labor Code section 510 and section 3
7 of the applicable IWC wage order.

8 62. As a result of the unlawful acts of Defendant, Plaintiff and the Overtime Wage Subclass
9 are entitled to recover damages pursuant to Labor Code section 510 and section 3 of the applicable IWC
10 wage order in an amount according to proof at trial for all unpaid hours of overtime work. Plaintiff, on
11 behalf of himself and the Overtime Wage Subclass, also seeks civil penalties, interest, and attorneys’
12 fees and costs pursuant to Labor Code sections 203, 204, 210, 218.5, 218.6, 558(a); and section 20 of
13 the applicable IWC wage order; and CCP § 1021.5 for Defendant’s unlawful conduct.
14

15
16 **FIFTH CAUSE OF ACTION**
17 **Penalties for Failure to Pay Timely Wages**
18 **in Violation of Labor Code § 204**

19 63. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
20 the preceding paragraphs.

21 64. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person in
22 any employment are due and payable twice during each calendar month, on days designated in advance
23 by the employer as the regular paydays.”

24 65. Premium pay constitutes “wages”, as that term is used in the Labor Code. *Naranjo v.*
25 *Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118 (premium pay is fairly understood as
26 falling within the Labor Code’s general definition of wages).

27 66. As set forth above, Defendant failed to pay Plaintiff, the Meal Break Subclass, the Rest
28 Break Subclass, the Minimum Wage Subclass, and the Overtime Wage Subclass (collectively,

1 “Untimely Wage Subclass”) all wages owed, including unpaid premium wages, minimum wages, and
2 overtime wages for time spent subject to Defendant’s control.

3 67. Due to Defendant’s failure to pay Plaintiff and the Untimely Wage Subclass all these
4 wages at the time they were owed, it follows that Defendant also failed to pay these wages on a timely
5 and bi-monthly basis, as required by Labor Code section 204. Accordingly, Defendant also failed to
6 timely pay Plaintiff and the Untimely Wage Subclass all wages owed within seven (7) days of the close
7 of the payroll period in accordance with Labor Code section 204(d) on a regular and consistent basis.

8 68. Labor Code section 210(a) provides that “[i]n addition to, and entirely independent and
9 apart from, any other penalty provided in this article, every person who fails to pay the wages of each
10 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
11 initial violation, one hundred dollars (\$100) for each failure to pay each employee[;] (2) For each
12 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
13 to pay each employee, plus 25 percent of the amount unlawfully withheld.”

14 69. As a result of the unlawful acts of Defendant, Plaintiff and the Untimely Wage Subclass
15 are entitled to recover civil penalties, interest, and attorneys’ fees and costs, in an amount according to
16 proof at trial, pursuant to Labor Code sections 201, 202, 204, 210, 218.5, 218.6, and for Defendant’s
17 unlawful conduct.

20 **SIXTH CAUSE OF ACTION**

21 **Failure to Provide and Maintain Accurate Itemized Wage Statements** 22 **in Violation of Labor Code §§ 226(a) and 1174(d)**

23 70. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
24 the preceding paragraphs.

25 71. Pursuant to Labor Code section 226, employers are obligated to furnish an itemized
26 wage statement showing, *inter alia*: gross wages earned; total hours worked; net wages earned; all
27 applicable hourly rates in effect during the pay period; and the corresponding number of hours worked
28 at each rate during the pay period. *Id.* at subd. (a)(1), (2), (5), and (9).

1 72. Premium pay constitutes “wages”, as that term is used in the Labor Code. *Naranjo v.*
2 *Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118, 121 (rest and meal break premiums are
3 wages that can be the basis of derivative claims for wage statement penalties).

4 73. Labor Code section 226(e) provides that an employee suffering injury as a result of a
5 knowing and intentional failure by the employer to comply with section 226(a) is entitled to recover
6 \$50 for initial pay period in which a violation of section 226(a) occurs and \$100 for each subsequent
7 pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay
8 periods in which the employer fails to provide accurate itemized statements to the employee causing the
9 employee to suffer injury.
10

11 74. Per Labor Code section 226(e)(2)(B), an “employee is deemed to suffer injury if the
12 employer fails to provide accurate and complete information required by one or more of the items in
13 section 226(a), and the “employee cannot promptly and easily determine from the wage statement
14 alone” the following, *inter alia*: the amount of the gross wages or net wages paid to the employee or
15 any other information required to be provided on the itemized wage statement.
16

17 75. Labor Code section 1174 provides in relevant part:

18 Every person employing labor in this state shall: . . . (d) Keep, at a
19 central location in the state or at the plants or establishments at which
20 employees are employed, payroll records showing the hours worked
21 daily by and the wages paid to, and the number of piece-rate units earned
22 by and any applicable piece rate paid to, employees employed at the
23 respective plants or establishments. These records shall be kept in
24 accordance with rules established for this purpose by the commission,
25 but in any case, shall be kept on file for not less than two years.

26 76. Labor Code section 1174.5 provides:

27 Any person employing labor who willfully fails to maintain . . . accurate
28 and complete records required by subdivision (d) of Section 1174. . .
 shall be subject to a civil penalty of five hundred dollars (\$500).

 77. Here, during the Class Period, Defendant intentionally and willfully failed to provide
Plaintiff and the Wage Statement Subclass with complete and accurate wage statements which included

1 all of the required information under Labor Code section 226(a), as a result of Defendant's failure to
2 pay them all wages owed, including all meal and rest break premiums owed during their employment.
3 Because of this, the wage statements issued to the Wage Statement Subclass during the Class Period did
4 not accurately reflect their gross wages earned, net wages earned, and all hours worked at each
5 applicable hourly rate, as required under section 226(a).

6 78. Defendant also failed to itemize the total number of hours of compensable meal and rest
7 breaks and overtime hours, as well as the corresponding rate(s) of compensation, and the gross wages
8 paid for each pay period during the Class Period; as required under Labor Code section 226.2.
9

10 79. Because Defendant failed to include accurate, itemized, and complete information
11 required by Labor Code section 226(a) on the wage statements it issued during the Class Period, the
12 Wage Statement Subclass is deemed to have suffered injury.

13 **SEVENTH CAUSE OF ACTION**
14 **Penalties for Failure to Pay All Wages Due Upon Termination**
15 **in Violation of Labor Code §§ 201 and 202**
16 **and Section 7 of the Applicable Wage Order**

17 80. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
18 the preceding paragraphs.

19 81. Pursuant to Labor Code section 201, if an employer discharges an employee, the
20 employer is required to pay all compensation earned and unpaid immediately at the time of discharge.

21 82. Pursuant to Labor Code section 202, if an employee quits, the employer is required to
22 pay all compensation earned and unpaid no later than 72 hours thereafter, unless the employee has
23 given 72 hours' notice, in which case the unpaid compensation shall be due at the time of quitting.

24 83. Pursuant to Labor Code section 203, if an employer fails to pay the final wages owed of
25 an employee who is discharged or who quits, "the wages of the employee shall continue as a penalty
26 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
27 wages shall not continue for more than 30 days."
28

1 84. Premium pay constitutes “wages”, as that term is used in the Labor Code. *Naranjo v.*
2 *Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 117-118 (“missed-break premium pay
3 constitutes wages for purposes of Labor Code section 203, and so waiting time penalties are available
4 under that statute if the premium is not timely paid”).

5 85. Defendant willfully and intentionally refused or failed to pay Plaintiff and the Class
6 Members whose employment was terminated during the Class Period (the “Waiting Time Penalty
7 Subclass”) all compensation due and owing upon their termination of employment, including all meal
8 and rest break premiums, minimum wages, and overtime wages owed at the time of their termination,
9 as required by Labor Code sections 201 and 202.

10 86. Accordingly, the Waiting Time Penalty Subclass is entitled to recover from Defendant
11 “waiting time” penalties in the form of accruing wages for each day they were not paid, at their regular
12 hourly rate of pay, for up to 30 days, pursuant to Labor Code section 203.

13 87. Additionally, Plaintiff, on behalf of himself and the Waiting Time Penalty Subclass, is
14 entitled to recover civil penalties, interest, and attorneys’ fees and costs, in an amount according to
15 proof at trial, pursuant to Labor Code sections 210, 218.5, and 218.6, for Defendant’s unlawful conduct.

16
17
18 **EIGHTH CAUSE OF ACTION**
19 **Failure to Pay for Sick Days**
20 **in Violation of Labor Code § 246(a), *et seq.***

21 88. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
22 the preceding paragraphs.

23 89. Labor Code section 246(a) provides that an employee who, on or after July 1, 2015,
24 works in California for the same employer for 30 or more days within a year from the commencement
25 of employment, is entitled to paid sick days.

26 90. Pursuant to Labor Code section 246(b)(1), an eligible employee shall “accrue paid sick
27 days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement
28 of employment.”

91. Pursuant to Labor Code section 246(c), an “employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

92. Pursuant to Labor Code section 246(d), “[a]ccrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period.”

93. Pursuant to Labor Code section 246(n), “[a]n employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.”

94. During the Class Period, Plaintiff and the Sick Pay Subclass accrued paid sick hours. At times during the Class Period, it was necessary for Plaintiff and the Sick Pay Subclass to take hours and/or days off of work for medical reasons, and they designated such time as sick leave.

95. Despite the foregoing, Defendant failed and/or refused to compensate Plaintiff and the Sick Pay Subclass for the hours and/or days that they designated as sick leave during the Class Period.

96. Due to Defendant's failure to compensate the Sick Pay Subclass for said hours, they are entitled to damages in an amount according to proof at trial.

NINTH CAUSE OF ACTION
Unfair Business Practices in Violation of
Business & Professions Code (§ 17200 *et seq.*)

97. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

98. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code section 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor

standards. Through its actions alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's conduct has violated state wage and hour laws as herein described.

99. Beginning at least four years prior to the filing of this Complaint, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by (a) failing to authorize and permit legally compliant meal and rest breaks and/or pay premium pay in violation of Labor Code section 226.7, 512, 516, and 1198; (b) failing to pay all minimum wages owed in violation of Labor Code section 1194 and 1197; (c) failing to pay all overtime wages owed in violation of Labor Code sections 510 and 1198; (d) failing to timely pay all wages owed for all time worked, in violation of Labor Code section 204; (e) failing to provide and maintain accurate itemized wage statements in violation of Labor Code section 226(a) and 1174(d); (f) failing to pay all wages due and owing upon termination in violation of Labor Code sections 201 and 202; and (g) failing to compensate for sick days and/or hours in violation of Labor Code section 246.

100. By its actions and omissions, Defendant has substantially injured Plaintiff and the Class. The harm to Plaintiff and the Class resulting from Defendant's Labor Code and the applicable IWC wage order violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute unfair business practices or acts within the meaning of the UCL.

JURY DEMAND

101. Plaintiff hereby demands trial by jury of his claims against Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant as follows:

///

1. General and special compensatory damages according to proof, including but not limited to damages for unpaid wages, and unpaid premiums;
2. Statutory damages or penalties, liquidated damages, and/or civil penalties, as applicable and as provided under the Labor Code, including but not limited to sections 201, 202, 204, 226(a), 226.7, 246(a), 510, 512(a), 516, 1194, 1197, 1198; Bus. & Prof. Code 17200 *et seq.*; any other applicable statute; and/or section 20 of the applicable wage order;
3. Exemplary and punitive damages, as applicable;
4. Reasonable attorney's fees; and costs and expenses of this action, pursuant to any applicable statutory basis and/or or the California Rules of Court;
5. Interest as allowed by law;
6. An order directing Defendant to take such affirmative steps as may be necessary and appropriate to correct the effect of its past unlawful acts and practices; and
7. All other further relief as the Court deems just and proper.

Respectfully submitted,

Dated: June 6, 2024

**EMPLOYMENT RIGHTS LAWYERS, APC
LAW OFFICE OF TATIANA HERNANDEZ, P.C.**

By: *Amir Seyedfarshi*
Amir Seyedfarshi, Esq.
Tatiana Hernández, Esq.
Attorneys for Plaintiff and the Class