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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ERIC ABRAM, on behalf of himself and all
others similarly situated, and the general
public,

Plaintiff,

v.

CB MANUFACTURING COMPANY, INC.,
a Delaware corporation; PEPSICO, INC., a
North Carolina corporation; and DOES 1
through 50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
12/16/2024

Chad Firke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

Case No.: 24CV076368

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 204, 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
3. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
4. Failure to Properly Pay Sick Pay (Lab. Code § 246);
5. Failure to Provide Accurate Wage Statements (Lab. Code §§ 226(a));
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
7. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff ERIC ABRAM (“Plaintiff”), on behalf of himself, all others similarly situated, the
2 general public, and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants CB
5 MANUFACTURING COMPANY, INC., a Delaware corporation; PEPSICO, INC., a North
6 Carolina corporation; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”)
7 for alleged violations of the California Labor Code and California Business and Professions Code.
8 As set forth below, Plaintiff alleges that Defendants have:

- 9 a. failed to pay all wages owed, including minimum and overtime wages, for all
10 time worked;
- 11 b. failed to pay overtime and/or double time wages by failing to include all
12 applicable remuneration in calculating the regular rate of pay;
- 13 c. failed to provide lawful meal periods;
- 14 d. failed to provide lawful rest periods;
- 15 e. failed to properly pay premium wages for missed meal and rest periods;
- 16 f. failed to properly pay sick time pay; and
- 17 g. failed to provide accurate wage statements.

18 Based on these alleged Labor Code violations, Plaintiff now brings this class and
19 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
20 restitution, and related relief on behalf of himself, all others similarly situated, and the general public.

21 **JURISDICTION AND VENUE**

22 2. This Court has subject matter jurisdiction to hear this case because the monetary
23 damages and restitution sought by Plaintiff from Defendants’ conduct exceeds the minimal
24 jurisdiction of the Superior Court of the State of California.

25 3. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure
26 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
27 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
28 maintains offices, transacts business and/or has an agent therein.

4. Venue is proper in Alameda because Defendants' have at all times alleged herein, conducted business in Alameda, and throughout California. As such, venue is proper in any county in California.

PARTIES

5. Plaintiff ERIC ABRAM is, and at all relevant times mentioned herein, an individual residing in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that Defendant CB MANUFACTURING COMPANY, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges that Defendant PEPSICO, INC. is, and at all relevant times mentioned herein, a North Carolina corporation doing business in the State of California.

8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, owners, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent, and ratification by such other defendants.

10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert

1 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
2 acts and omissions alleged herein.

3 11. This action has been brought and may be maintained as a class action pursuant to Code
4 of Civil Procedure section 382 because there is a well-defined community of interest among the
5 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
6 unaware of any difficulties likely to be encountered in managing this case as a class action.

7 12. Plaintiff seeks to represent the following Classes and Subclasses (collectively referred
8 to as “Class Members”) composed of and defined as follows:

- 9 a. **Hourly Employee Class**: All persons employed by Defendants, collectively or
10 separately, in hourly or non-exempt positions in California four years prior to the
11 filing of this action and ending on the date that final judgment is entered in this
12 action (“Hourly Employee Class”).
- 13 b. **Meal Period Sub-Class**: All **Hourly Employee Class** members who worked in
14 a shift in excess of five (5) hours during the four years prior to the filing of this
15 action and ending on the date that final judgment is entered in this action.
- 16 c. **Rest Period Sub-Class**: All **Hourly Employee Class** members who worked a
17 shift of at least three and one-half (3.5) hours the four years prior to the filing of
18 this action and ending on the date that final judgment is entered in this action.
- 19 d. **Sick-Pay Class**: All persons employed by Defendants in California who, at any
20 time from four years prior to the filing of this action and ending on the date that
21 final judgment is entered in this action, worked for more than 30 days for
22 Defendants, and were not paid for at least one hour of sick time for every 30 hours
23 of work thereafter, or at least 3 days of sick time for every 12-month period of
24 employment at the appropriate hourly rate.
- 25 e. **Wage Statement Class**: All persons employed by Defendants in California during
26 the period beginning one year before the filing of this action and ending when final
27 judgment is entered.
- 28 f. **UCL Class**: All **Hourly Employee Class** members employed by Defendants in
California during the four years prior to the filing of this action and ending on the
date that final judgment is entered in this action.

25 13. **Reservation of Rights**: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
26 to amend or modify the class definitions with greater specificity, by further division into sub-classes
27 and/or by limitation to particular issues.

28 14. **Numerosity**: The Class Members are so numerous that the individual joinder of each

individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

15. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual Class Members. These common questions include, but are not limited to:

- a. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- b. Whether Defendants maintained a policy or practice of failing to provide employees with lawful meal periods;
- c. Whether Defendants maintained a policy or practice of failing to provide employees with lawful rest periods;
- d. Whether Defendants failed to pay premium wages to class members when they have not been provided with meal and rest periods at the appropriate rates of pay;
- e. Whether Defendants failed to pay sick time pay at the proper rate;
- f. Whether Defendants failed to provide Class Members with accurate written wage statements including, among other things, the correct amounts of gross and net wages, total hours worked, and applicable hourly rates of pay; and
- g. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition.

16. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes, and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative and has no interests that are adverse to, or otherwise conflict with, the interests of absent Class Members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

18. **Adequacy of Class Counsel:** Plaintiff's counsel is adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

19. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS

20. Plaintiff worked for Defendants as a non-exempt employee during the relevant and statutory periods.

21. Defendants had a common policy and practice of systemically failing to pay Plaintiff and Class Members proper wages and overtime for all hours worked at the proper rates of pay. First, Plaintiff and Class Members were consistently required to perform work, off-the-clock, for which they were not paid wages. By way of example, Plaintiff and Class Members were systemically required to arrive to work early to wait in line to clock in and to end their meal periods early to wait in line to clock back into work on time. The foregoing time it took for Plaintiff and Class Members to participate in these activities was uncompensated working time under the direction and control of Defendants, for which no wages were paid.

22. This uncompensated time caused Plaintiff and Class Members to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they were systemically denied.

1 23. Second, Defendants failed to pay Plaintiff and Class Members overtime wages at the
2 proper and applicable regular rates of pay. Specifically, Plaintiff and Class Members earned
3 incentive pay and shift differentials in addition to their hourly pay. However, these supplemental
4 earnings were not accounted for when determining Plaintiff and Class Members' regular rates of
5 pay, and respective and proper overtime, premium, and sick rates of pay. Defendants also failed to
6 pay Class Members "premium pay" wages, i.e. one hour of wages at each Class Member's effective
7 hourly rate of pay, for each meal period and/or rest break that Defendants failed to provide or
8 deficiently provided. As a result, Plaintiff and Class Members were not fully compensated for all
9 hours worked.

10 24. Defendants had a common policy and practice of systemically denying Plaintiff and
11 Class Members the opportunity to take meal periods in compliance with the California Law.
12 Specifically, the uncompensated pre-shift duties, discussed herein, caused Plaintiff and Class
13 Members' meal periods to commence after the completion of their fifth hour of work. Additionally,
14 Defendants implemented a common policy and practice of denying Plaintiff and Class members the
15 opportunity to take second compliant meal periods when they worked in excess of ten (10) and
16 twelve (12) hours a day.

17 25. Plaintiff and Class Members were not provided with meal periods of at least thirty (30)
18 minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not
19 scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of
20 requiring putative class members to continue working through their meal and rest periods due to the
21 excessive workload.

22 26. Similarly, Defendants had a common policy and practice of systemically denying
23 Plaintiff and Class Members the opportunity to take rest periods in compliance with California Law.
24 Plaintiff and Class Members were not provided with rest periods of at least ten (10) minutes for
25 each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy and practice
26 of not scheduling each rest period as part of each work shift, including second rest breaks for shifts
27 of six (6) hours or more; and (2) Defendants' policy and practice of requiring putative class
28 members to continue working through their rest breaks due to the excessive workload. Moreover,

1 Plaintiff and Class Members were restricted and/or prohibited from leaving the premises during rest
2 breaks in violation of California law. Thus, Class Members were consistently denied of their rest
3 breaks.

4 27. Defendants had a common policy and practice of systemically failing to pay Plaintiff
5 and Class Members the requisite sick time pay at the proper rate of pay in accordance with
6 California Law. Specifically, Defendants failed to incorporate all remunerations, including
7 incentive pay, shift differentials and/or non-discretionary bonuses, into the calculation of the regular
8 rate of pay for purposes of calculating sick pay. Therefore, during times when Plaintiff and Class
9 Members worked overtime and received incentive pay, shift differentials and/or non-discretionary
10 bonuses, Defendants failed to pay all sick pay by paying a lower overtime rate than required.

11 28. Plaintiff and Class Members were not provided with accurate wage statements as
12 mandated by law pursuant to Labor Code section 226.

13 29. Specifically, Defendants failed to comply with Labor Code section 226(a)(1), (a)(2),
14 (a)(5) and (a)(9) as Defendants failed to provide Plaintiff and Class Members wage statements that
15 accurately reported all hours worked, including overtime, and the applicable hourly rates.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY HOURLY MINIMUM AND OVERTIME WAGES**

18 **(Lab. Code §§ 204, 223, 510, 1194, 1197 and 1198)**

19 **(Plaintiff and Hourly Employee Class)**

20 30. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 31. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
23 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
24 applicable Wage Order.

25 32. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
26 which an employee is subject to the control of the employer, and includes all the time the employee
27 is suffered or permitted to work, whether or not required to do so.”

28 33. Section 4 of the applicable Wage Order requires an employer to pay non-exempt

employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

34. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

35. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest thereon.

36. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

37. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

38. Labor Code section 1198 makes it unlawful for employers to employ employees under conditions that violate the applicable Wage Order.

39. Labor Code section 223 makes it unlawful for employers to pay their employees lower wages than required by contract or statute while purporting to pay them legal wages.

40. Labor Code section 510 and Section 3 of the applicable Wage Order require employees to pay non-exempt employees overtime wages of no less than one and one-half (1.5) times their respective regular rates of pay for all hours worked in excess of eight (8) hours in one workday, all hours worked in excess of forty (40) hours in one workweek, and/or for the first eight (8) hours worked on the seventh consecutive day of one workweek.

41. Labor Code section 510 and Section 3 of the applicable Wage Order also require employers to pay non-exempt employees overtime wages of no less than two (2) times their respective regular rates of pay for all hours worked in excess of twelve (12) hours in one workday and for all hours worked in excess of eight (8) hours on a seventh consecutive workday during the workweek.

1 42. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
2 centrally devised policies and practices to Plaintiff and **Hourly Employee Class** members with
3 respect to working conditions and compensation arrangements.

4 43. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
5 **Employee Class** members for all time worked, including but not limited to, overtime hours at
6 statutory and/or agreed rates.

7 44. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
8 overtime for all hours worked. First, Plaintiff and **Hourly Employee Class** members were
9 consistently required to perform work, off-the-clock, for which they were not paid wages. By way
10 of example, Plaintiff and **Hourly Employee Class** members were systemically required to arrive
11 to work early to wait in line to clock in and to end their meal periods early to wait in line to clock
12 back into work on time. The foregoing time it took for Plaintiff and **Hourly Employee Class**
13 members to participate in these activities was uncompensated working time under the direction and
14 control of Defendants, for which no wages were paid.

15 45. This uncompensated time caused Plaintiff and **Hourly Employee Class** members to
16 work in excess of eight (8), ten (10), and twelve (12) hours a day and/or forty (40) hours a week,
17 entitling Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which
18 they were systemically denied.

19 46. Second, Defendants failed to pay Plaintiff and **Hourly Employee Class** members
20 overtime wages at the proper and applicable regular rates of pay. Specifically, Plaintiff and **Hourly**
21 **Employee Class** members earned incentive pay and shift differentials in addition to their hourly
22 pay. However, these supplemental earnings were not accounted for when determining Plaintiff and
23 **Hourly Employee Class** members' regular rates of pay, and respective and proper overtime rates
24 of pay. Defendants also failed to pay **Hourly Employee Class** members "premium pay" wages, i.e.
25 one hour of wages at each **Hourly Employee Class** members' effective hourly rate of pay, for each
26 meal period and/or rest break that Defendants failed to provide or deficiently provided. As a result,
27 Plaintiff and **Hourly Employee Class** members were not fully compensated for all hours worked.

28 47. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**

1 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
2 full amount of wages earned during each pay period during the applicable limitations period,
3 including overtime wages.

4 48. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194, 1194.2, 1197.1 and 1198
5 Plaintiff, on behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid
6 straight time and overtime wages, interest thereon and costs of suit.

7 49. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
8 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
9 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **(Lab. Code §§ 204, 226.7, 512, 1174, and 1198)**

13 **(Plaintiff and Meal Period Sub-Class)**

14 50. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
15 fully alleged herein.

16 51. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
17 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
18 Code and the applicable Industrial Welfare Commission Wage Order.

19 52. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
20 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
21 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
22 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
23 minutes for each work period of ten hours.

24 53. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
25 Commission Wage Order ("Wage Order") both prohibit employers from requiring employees to
26 work during required meal periods and require employers to pay non-exempt employees an hour of
27 premium wages on each workday that the employee is not provided with the required meal period.

28 54. Compensation for missed meal periods constitutes wages within the meaning of Labor

1 Code section 200.

2 55. Labor Code section 1198 makes it unlawful to employ a person under conditions that
3 violate the applicable Wage Order.

4 56. Section 11 of the applicable Wage Order states:

5 No employer shall employ any person for a work period of more than
6 five (5) hours without a meal period of not less than 30 minutes, except
7 that when a work period of not more than six (6) hours will complete
8 the day's work the meal period may be waived by mutual consent of
9 the employer and employee. Unless the employee is relieved of all duty
10 during a 30 minute meal period, the meal period shall be considered an
11 'on duty' meal period and counted as time worked. An 'on duty' meal
period shall be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing,
revoke the agreement at any time.

12 57. At all relevant times and upon information and belief, Plaintiff was not subject to a
13 valid on-duty meal period agreement. Plaintiff is informed and believes that, at all relevant times,
14 **Meal Period Sub-Class** members were not subject to valid on-duty meal period agreements with
15 Defendants.

16 58. Upon information and belief, Plaintiff alleges that, at all relevant times during the
17 applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff
18 and members of the **Meal Period Sub-Class** with uninterrupted, duty-free meal periods for at least
19 thirty (30) minutes for each five (5) hour work period, as required by Labor Code section 512 and
20 the applicable Wage Order. Specifically, due to understaffing and heavy workloads, Plaintiff and
21 **Meal Period Sub-Class** members were denied the opportunity to take timely meal periods
22 altogether and/or prior to the completion of their fifth hour of work. Additionally, the
23 uncompensated pre-shift duties, discussed herein, further delayed Plaintiff and **Meal Period Sub-**
24 **Class** members' meal periods to commence after to the completion of the fifth and tenth hours of
25 work. Additionally, Defendants implemented a common policy and practice of denying Plaintiff
26 and **Meal Period Sub-Class** members the opportunity to take second compliant meal periods when
27 they worked in excess of ten (10) and twelve (12) hours a day.
28

59. Upon information and belief, Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-Class** members when they worked five (5) hours without a meal period.

60. Upon information and belief, Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period Sub-Class** with a second meal period when they worked shifts of ten (10) or more hours and failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

61. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

62. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Plaintiff and Rest Period Sub-Class)

63. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

64. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

65. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net rest time for each four (4) hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

66. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit

1 employers from requiring employees to work during required rest periods and require employers to
2 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on
3 each workday that the employee is not provided with the required rest period(s).

4 67. Compensation for missed rest periods constitutes wages within the meaning of Labor
5 Code section 200.

6 68. Labor Code section 1198 makes it unlawful to employ a person under conditions that
7 violate the Wage Order.

8 69. Plaintiff alleges that, at all relevant times during the applicable limitations period,
9 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
10 with net rest period of at least ten (10) uninterrupted minutes for each four (4) hour work period, or
11 major fraction thereof, as required by the applicable Wage Order.

12 70. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of
13 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
14 Defendants' policy and practice of not scheduling each rest period as part of each work shift,
15 including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and
16 practice of requiring **Rest Period Sub-Class** members to continue working through their rest breaks
17 due to the excessive workload. Moreover, Plaintiff and Class Members were restricted and/or
18 prohibited from leaving the premises during rest breaks in violation of California law. Thus, **Rest**
19 **Period Sub-Class** members were consistently denied of their rest breaks.

20 71. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
21 members additional premium wages when required rest periods were not provided.

22 72. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
23 and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon,
24 and costs of suit.

25 73. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
26 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
27 **Rest Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROPERLY PAY SICK PAY**

3 **(Lab. Code § 246)**

4 **(Plaintiff and Sick Pay Class)**

5 74. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 75. Labor Code Section 246 affords an employee “who works in California for 30 or more
8 days within a year from the commencement of employment [] paid sick days . . . of not less than
9 one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid time
10 off by the 120th calendar day of employment or each calendar year, or in each 12-month period.”

11 76. Additionally, Subsection (l) of Section 246 provides:

12 For the purposes of this section, an employer shall calculate paid sick leave
13 using any of the following calculations:

14 (1) Paid sick time for nonexempt employees shall be calculated in the same
15 manner as the regular rate of pay for the workweek in which the employee
16 uses paid sick time, whether or not the employee actually works overtime
in that workweek.

17 77. Defendants had a common policy and practice of systemically failing to pay Plaintiff
18 and **Sick Pay Class** Members the requisite sick time pay in accordance with California Law.
19 Specifically, Defendants failed to incorporate all remunerations, including incentive pay, shift
20 differentials and/or non-discretionary bonuses, into the calculation of the regular rate of pay for
21 purposes of calculating sick pay. Therefore, during times when Plaintiff and **Sick Pay Class**
22 Members worked overtime and received incentive pay, shift differentials and/or non-discretionary
23 bonuses, Defendants failed to pay all sick pay by paying a lower overtime rate than required.

24 78. Therefore, **Sick Pay Class** Members are owed the unpaid balance of said wages
25 pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and
26 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties
27 pursuant to Labor Code § 558(a).

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 79. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 80. Labor Code section 226(a) states:

8 An employer, semimonthly or at the time of each payment of wages,
9 shall furnish to his or her employee, either as a detachable part of the
10 check, draft, or voucher paying the employee's wages, or separately if
11 wages are paid by personal check or cash, an accurate itemized
12 statement in writing showing (1) gross wages earned, (2) total hours
13 worked by the employee, except as provided in subdivision (j), (3) the
14 number of piece-rate units earned and any applicable piece rate if the
15 employee is paid on a piece-rate basis, (4) all deductions, provided that
16 all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid, (7) the
19 name of the employee and only the last four digits of his or her social
20 security number or an employee identification number other than a
21 social security number, (8) the name and address of the legal entity that
22 is the employer and, if the employer is a farm labor contractor, as
23 defined in subdivision (b) of Section 1682, the name and address of the
24 legal entity that secured the services of the employer, and (9) all
25 applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the
27 employee and, beginning July 1, 2013, if the employer is a temporary
28 services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment. The
deductions made from payment of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year,
and a copy of the statement and the record of the deductions shall be
kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For
purposes of this subdivision, 'copy' includes a duplicate of the itemized
statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

81. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide Plaintiff and **Wage Statement Class** members
with accurate statements as the wage statements issued to class members failed to account all hours

1 worked, including overtime, and the applicable hourly rates.

2 82. Plaintiff is informed and believes that Defendants' failure to provide Plaintiff and
3 **Wage Statement Class** members with accurate written wage statements was intentional in that
4 Defendants have the ability to provide them with accurate wage statements but have intentionally
5 provided them with written wage statements that Defendants have known do not comply with Labor
6 Code section 226(a).

7 83. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
8 Defendants have violated their legal rights to receive accurate wage statements and have misled
9 them about their actual rates of pay and wages earned. In addition, inaccurate information on their
10 wage statements has prevented immediate challenges to Defendants' unlawful pay practices, has
11 required discovery and mathematical computations to determine the amount of wages owed, has
12 caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to
13 the submission of inaccurate information about wages and deductions to federal and state
14 government agencies.

15 84. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
16 **Statement Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period
17 in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay
18 period in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate
19 penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

20 **SIXTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

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

23 **(Plaintiff and UCL Class)**

24 85. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
25 herein.

26 86. Business and Professions Code section 17200 defines "unfair competition" to include
27 any unlawful business practice.

28 87. Business and Professions Code sections 17203-17204 allow a person who has lost

1 money or property as a result of unfair competition to bring a class action in accordance with Code
2 of Civil Procedure section 382 to recover money or property that may have been acquired from
3 similarly situated persons by means of unfair competition.

4 88. California law requires employers to pay hourly, non-exempt employees for all hours
5 they are permitted or suffered to work, including hours that the employer knows or reasonable
6 should know that employees have worked.

7 89. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST, SECOND,
8 THIRD, and FOURTH causes of action herein.

9 90. Plaintiff lost money or property as a result of the aforementioned unfair competition.

10 91. Defendants have or may have acquired money by means of unfair competition.

11 92. Plaintiff is informed and believes, and thereupon alleges that by committing the Labor
12 Code violations described in this Complaint, Defendants violated Labor Code sections 204, 215,
13 216, 225, 226.6, 226.7, 246, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
14 as well as applicable Wage Orders, which make it a misdemeanor to commit the violations alleged
15 herein.

16 93. Defendants have committed criminal conduct through their policies and practices of,
17 *inter alia*, failing to comport with their affirmative obligations as an employer to: pay for all hours
18 worked at the proper rates of pay; provide non-exempt employees with compliant meal and rest
19 periods; pay sick time at the proper rate of pay; and reimburse for necessary business expenditures.

20 94. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
21 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
22 Business and Professions Code section 17200 *et seq.* protects against unfair competition and allows
23 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
24 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
25 similarly situated persons in a class action proceeding.

26 95. As a result of Defendants' violations of the Labor Code during the applicable
27 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
28 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'

1 conduct.

2 96. Plaintiff is informed and believes that other similarly situated persons have been
3 subject to the same unlawful policies or practices of Defendants.

4 97. Due to the unfair and unlawful business practices in violation of the Labor Code,
5 Defendants have gained a competitive advantage over other comparable companies doing business
6 in the State of California that comply with their legal obligations.

7 98. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
8 relief for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
9 violates or is considered unlawful under any other state or federal law.

10 99. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
11 Plaintiff requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
12 Defendants, and each of them, and their agents and employees, from further violations of the Labor
13 Code and applicable Wage Orders.

14 100. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
15 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
16 Defendants, and each of them, and their agents and employees, from further violations of the Labor
17 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seeks
18 an order permanently enjoining Defendants, and each of them, and their respective agents and
19 employees, from further violations of the Labor Code and applicable Industrial Welfare
20 Commission Wage Orders.

21 101. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
22 himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
23 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
24 and unfair business practices.

25 102. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
26 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
27 reasonable attorneys' fees in connection with their unfair competition claims.

28 103. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of

1 himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
2 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
3 and unfair business practices.

4 104. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
5 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
6 reasonable attorneys' fees in connection with their unfair competition claims.

7 **SEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES**

9 **(Lab. Code §§ 2698, *et seq.*)**

10 105. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

11 106. During the applicable limitations period, Defendants have violated Labor Code §§
12 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 515, 558, 558.1, 1174, 1174.5,
13 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*¹

14 107. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself
15 and other current and former employees, to bring a representative civil action to recover civil penalties
16 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
17 maintained as a class action pursuant to Code of Civil Procedure section 382.

18 108. Plaintiff, a former employee against whom Defendants committed one or more of the
19 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
20 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
21 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
22 Defendants within the state of California from one year prior to the date of this letter and continuing
23 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
24 "Aggrieved Employees")

25
26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
27 Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

1 109. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
2 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
3 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
4 investigate.

5 110. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
6 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 226.8,
7 246, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, and 1198:

- 8 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 246, 1174, 1194, and
9 1198, one hundred dollars (\$100) for each employee per pay period for each
10 initial violation and two hundred dollars (\$200) for each employee per pay
11 period for each subsequent violation (penalties set by Labor Code §
12 2699(f)(2));
- 13 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
14 (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 15 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
16 employee for each initial violation that was neither willful nor intentional, two
17 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
18 withheld from each employee, for each initial violation that was either willful
19 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
20 five percent (25%) of the amount unlawfully withheld from each employee,
21 for each subsequent violation, regardless of whether the subsequent violation
22 was either willful or intentional (penalties set by Labor Code § 210);
- 23 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
24 employee for each initial violation that was neither willful nor intentional, two
25 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
26 the amount unlawfully withheld from each employee, for each initial violation
27 that was either willful or intentional, and two hundred dollars (\$200) for each
28 employee, plus twenty-five percent (25%) of the amount unlawfully withheld

1 from each employee, for each subsequent violation, regardless of whether the
2 subsequent violation was either willful or intentional (penalties set by Labor
3 Code § 225.5);

4 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
5 citation, two hundred and fifty dollars (\$250) for each employee for each
6 violation. Alternatively, if an initial citation or its equivalent occurred before
7 the filing of this action, one thousand dollars (\$1,000) for each employee for
8 each violation (penalties set by Labor Code § 226.3);

9 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
10 employee for each initial pay period for which the employee was underpaid,
11 and one hundred dollars (\$100) for each employee for each subsequent pay
12 period for which the employee was underpaid (penalties set by Labor Code §
13 558);

14 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
15 aggrieved employee for each initial violation of Labor Code § 1197 that was
16 intentional and two hundred and fifty dollars (\$250) for each aggrieved
17 employee per pay period for each subsequent violation of Labor Code § 1197,
18 regardless of whether the initial violation was intentional (penalties set by
19 Labor Code § 1197.1);

20 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
21 attorneys' fees and costs in connection with Plaintiff's claims for civil
22 penalties.

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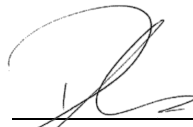
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
3 public, prays for relief and judgment against Defendants as follows:

- 4 a. An order that the action be certified as a class action;
5 b. An order that Plaintiff be appointed class representative;
6 c. An order that counsel for Plaintiff be appointed class counsel;
7 d. Unpaid wages and overtime;
8 e. Unreimbursed expenses;
9 f. Actual damages;
10 g. Liquidated damages;
11 h. Restitution;
12 i. Declaratory relief;
13 j. Pre-judgment interest;
14 k. Statutory penalties;
15 l. Civil Penalties
16 m. Costs of suit;
17 n. Reasonable attorneys' fees; and
18 o. Such other relief as the Court deems just and proper.

19 Dated: December 16, 2024

D.LAW, INC.

20
21 

22 _____
23 David Yeremian
24 David Keledjian
25 Svetlana Hovhannisyan
26 Attorneys for Plaintiff
27 ERIC ABRAM and the putative class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: December 16, 2024

D.LAW, INC.



David Yerejian
David Keledjian
Svetlana Hovhannisyan
Attorneys for Plaintiff
ERIC ABRAM 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 450 N Brand Blvd., Suite 840 Glendale CA 91203.

Samantha D. Hardy (SBN 199125)
shardy@sheppardmullin.com
 Carina L. Novell (SBN 329560)
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**SHEPPARD, MULLIN,
 RICHTER & HAMPTON LLP**
 501 West Broadway, 18th Floor
 San Diego, CA 92101-3598

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] (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.

Executed on December 16, 2024, at Glendale, California


Jordan Floyd