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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO COUNTY

TORREAN L TYUS, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

BLACK DIAMOND PAVER STONES &
LANDSCAPE, an entity of unknown form;
BLACK DIAMOND PAVER STONES &
LANDSCAPE, INC. a California Corporation;
and DOES 1 through 50, inclusive

Defendants.

Case No. 24CV008537

CLASS ACTION

Assigned for All Purposes To:

Hon. Thadd A. Blizzard

Dept.: 43

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 *et seq.* and 246
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
9. Violation of Labor Code § 221;
10. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
11. Penalties Pursuant to Labor Code § 203; and
12. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

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

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of himself and all similarly situated current and
6 former employees within the State of California who, at any time four (4) years prior to the filing of
7 this lawsuit, are or were employed by Defendants BLACK DIAMOND PAVER STONES &
8 LANDSCAPE, BLACK DIAMOND PAVER STONES & LANDSCAPE, INC., and DOES 1
9 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges
10 that Defendants, and each of them, violated various provisions of the California Labor Code,
11 relevant orders of the Industrial Welfare Commission (IWC), and California Business & Professions
12 Code, and seeks redress therefore.

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

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

THE PARTIES

A. The Plaintiff

4. Plaintiff TORREAN L TYUS has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt employee within the State of California.

B. The Defendants

5. Defendant BLACK DIAMOND PAVER STONES & LANDSCAPE, ("BDPSL") an entity of unknown form; is an entity of unknown form with its principle executive offices in San Jose, California and has been listed as the employer on Plaintiff's wage statements during the relevant time period. BDPSL does not list a California address with the California Secretary of State, but upon information and belief, employs Plaintiff and the Class Members in Sacramento County, including at Defendants' offices and facilities in Sacramento, California, and throughout California and conducts business throughout California.

6. Defendant BLACK DIAMOND PAVER STONES & LANDSCAPE, INC. ("BDPSL INC.") is a California corporation with its principle executive offices in San Jose, California, and has been listed as the employer on PLAINTIFF'S personnel file during the relevant time period. BDPSL INC. lists an address in San Jose, California with the California Secretary of State, and employs Plaintiff and the Employees in Sacramento County, including at Defendants' offices and facilities in Sacramento, California, and throughout California and Defendants conduct business throughout California.

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

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

JURISDICTION AND VENUE

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

FACTUAL BACKGROUND

10. The Employees who comprise the Class and Collective, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hired Employees who work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff contends that Defendants, failed to pay Plaintiff and the Class members all wages due and owing, including for off the clock work, made unlawful deductions from their pay, failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable Wage Orders, where applicable. Additionally, Defendants paid Plaintiffs and Employees shift differentials, nondiscretionary commissions,

1 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants
2 failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions,
3 incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
4 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiffs and
5 Employees worked overtime and received shift differentials, nondiscretionary commissions,
6 incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by
7 paying a lower overtime rate than required.

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

12 12. During the course of Plaintiff and the Class members' employment with Defendants,
13 they were not paid all wages they were owed, including for all work performed and for all overtime
14 hours worked.

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

27 14. As a result of the above described daily work demands and pressures to work through
28 breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class

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

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

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

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

26 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
27 present, Defendants paid Plaintiff and Employees shift differentials, nondiscretionary commissions,
28 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants

1 failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions,
2 incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
3 purposes of calculating sick pay. Therefore, during times when Plaintiff and Employees worked
4 overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or
5 nondiscretionary bonuses, Defendants failed to pay all sick pay by paying a lower overtime rate than
6 required. Additionally, Employees were not paid all of their sick pay.

7 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
8 present, Defendants paid Plaintiff and Employees shift differentials, nondiscretionary commissions,
9 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants
10 failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions,
11 incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
12 purposes of calculating vacation pay. Therefore, during times when Plaintiff and Employees worked
13 overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or
14 nondiscretionary bonuses, Defendants failed to pay all vacation pay by paying a lower overtime rate
15 than required.

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

22 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
23 continuing to the present, Defendants have consistently failed to provide Employees with timely,
24 accurate, and itemized wage statements as required by California wage-and-hour laws. Specifically,
25 Defendants failed in their affirmative obligation to keep accurate records of the correct overtime
26 wages based on proper regular rate calculations that included shift differentials, nondiscretionary
27 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of
28 compensation of their Employees. Moreover, the wage statements given to Employees by

1 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
2 periods and rest breaks, all of which Defendants knew or reasonably should have known were owed
3 to Employees, as alleged hereinabove. The wage statements provided to Employees were confusing
4 and required Employees to engage in discovery and refer to outside sources to verify whether their
5 pay was correct and potentially resulting in a miscalculation by the Employees.

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

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

12 24. From at least four (4) years prior to the filing of this lawsuit and continuing to the
13 present, Defendants have consistently and unlawfully collected or received wages from Employees.
14 Defendants unlawfully removed wages for miscellaneous deductions that Employees never agreed
15 to in violation of Labor Code § 221.

16 25. From at least four (4) years prior to the filing of this lawsuit and continuing to the
17 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
18 performance of their job duties for Defendants including, but not limited to the purchase of a
19 computer and internet usage and other costs associated with working from home in addition to the
20 costs of tools such as measuring tapes and measuring sticks, which were necessary to perform their
21 duties under Defendants' employ which was used throughout the course of Employees' duties under
22 Defendants' employ in violation of Labor Code § 2802.

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

26 27. From at least four (4) years prior to filing this lawsuit and continuing to the present,
27 Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at
28 the time of their termination of within seventy-two (72) hours of their resignation, as required by

1 California wage-and-hour laws.

2 28. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
3 Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.4, 226.7, 227.3, 245 *et*
4 *seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12 1185, 1194, 1194.2, 1197, 1198, 1199,
5 1670.5, and 2802, and applicable provisions of the IWC Wage Orders.

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

9 **CLASS ALLEGATIONS**

10 30. Plaintiff brings this class action on behalf of himself and all others similarly situated
11 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
12 “All individuals employed by Defendants, at any time within four (4) years of the filing of this
13 lawsuit, as non-exempt, hourly employees within the State of California.

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

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

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

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

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

28 e. Subclass 5. Vacation Wages Subclass. All Class members who were not

1 compensated at the Employee's regular rate of pay for their vacation wages.

2 f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at the
3 Employee's regular rate of pay for their sick pay wage.

4 g. Subclass 7. Wage Statement Subclass. All Class members who, within the applicable
5 limitations period, were not provided with accurate itemized wage statements.

6 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to keep accurate time and wage records as required by
8 California wage-and-hour laws.

9 i. Subclass 9. Unauthorized Deductions from Wages Subclass. All Class members who
10 were subject to Defendants' policy and/or practice of automatically deducting wages from
11 Employees' bank accounts.

12 j. Subclass 10. Failure to Reimburse for Necessary Business Expenditures. All Class
13 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
14 the performance of Employees job duties for Defendants which were necessary to perform their
15 duties under Defendants' employ.

16 k. Subclass 11. Termination Pay Subclass. All Class members who, within the
17 applicable limitations period, either voluntarily or involuntarily separated from their employment
18 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
19 termination.

20 l. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
21 result of Defendants' business acts and practices, to the extent such acts and practices are found to
22 be unlawful, deceptive, and/or unfair.

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

26 33. This action has been brought and may properly be maintained as a class action under
27 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
28 interest in litigation and proposed class is easily ascertainable.

1 **A. Numerosity**

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

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

9 **B. Commonality**

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

- 12 a. Whether Defendants failed to pay Employees minimum wages;
- 13 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 14 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
15 § 510;
- 16 d. Whether Defendants failed to pay Employees vacation wages as required under
17 Labor Code § 227.3;
- 18 e. Whether Defendants failed to pay Employees sick pay as required under Labor Code
19 § 245;
- 20 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
21 Wage Orders, by failing to provide Employees with requisite meal periods or
22 premium pay in lieu thereof;
- 23 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
24 Orders, by failing to provide Employees with requisite rest breaks or premium pay
25 in lieu thereof;
- 26 h. Whether Defendants violated Labor Code § 226(a);
- 27 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 28 j. Whether Defendants violated Labor Code §221;

- 1 k. Whether Defendants failed to keep accurate time and wage records;
- 2 l. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 3 wages and compensation due and owing at the time of termination of employment;
- 4 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 5 n. Whether Employees are entitled to equitable relief pursuant to Business and
- 6 Professions Code § 17200 *et seq.*

7 **C. Typicality**

8 37. The claims of the named plaintiff are typical of those of the other Employees.

9 Employees all sustained injuries and damages arising out of and caused by Defendant's common

10 course of conducts in violation of statutes, as well as regulations that have the force and effect of

11 law, as alleged herein.

12 **D. Adequacy of Representation**

13 38. Plaintiff will fairly and adequately represent and protect the interest of Employees.

14 Counsel who represents Employees are experienced and competent in litigating employment class

15 actions.

16 **E. Superiority of Class Action**

17 39. A class action is superior to other available means for the fair and efficient

18 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

19 questions of law and fact common to all Employees predominate over any questions affecting only

20 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of

21 Defendants' illegal policies or practices of failing to compensate Employees properly.

22 40. Class action treatment will allow those persons similarly situated to litigate their

23 claims in the manner that is most efficient and economical for the parties and the judicial system.

24 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY MINIMUM WAGES**

27 **(Against All Defendants)**

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

1 full herein.

2 42. Defendants failed to pay Employees minimum wages for all hours worked.
3 Defendants had a consistent policy of misstating Employees time records and failing to pay
4 Employees for all hours worked. Moreover, Defendants did not pay Plaintiff and Employees at the
5 applicable minimum wage for all hours worked including during meal breaks. Defendants' uniform
6 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class
7 as a whole, as a result of implementing a uniform policy and practice that denied accurate
8 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

12 44. The applicable minimum wages fixed by the commission for work during the
13 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore
14 entitled to double the minimum wage during the relevant period.

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

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

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

50. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time off the clock. Employees regularly worked over 8 hours on a given day without receiving overtime compensation.

51. Furthermore, on information and belief, Defendants did not pay Plaintiff and Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and Employees shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

1 52. Therefore, during times when Plaintiff and Employees worked overtime and received
2 shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
3 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

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

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

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

25 **THIRD CAUSE OF ACTION**

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

27 **(Against All Defendants)**

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

1 full herein.

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

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

13 61. Moreover, Defendants failed to compensate Employees for each meal period not
14 provided or inadequately provided, as required under Labor Code § 226.7. Additionally, Defendants
15 also paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary
16 bonuses to Employees but Defendants failed to include these forms of remuneration in the regular
17 rate of pay from which premium pay was calculated and paid.

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

21 **FOURTH CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

26 64. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
27 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
28 not less than ten (10) minutes for each consecutive four (4) hour shift.

65. Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

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

67. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee’s effective hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7. Additionally, Defendants also paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES

(Against All Defendants)

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

70. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served.

71. Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of

1 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

2 72. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant to
3 Labor Code § 227.3.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

6 **(Against All Defendants)**

7 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 74. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
10 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
11 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
12 with the pay calculation under California Labor Code § 246(1).

13 75. Defendants paid shift differentials, nondiscretionary commissions, incentive pay,
14 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
15 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
16 calculating the amount of paid sick time due when sick time is used according to the requirements
17 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
18 rate, in violation of the law. Additionally, Employees were not paid all of their sick pay.

19 76. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
20 § 245 *et seq.* and §§ 245 *et seq.* and 246.

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 226(a)**

23 **(Against All Defendants)**

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

26 78. California Labor Code § 226(a) requires an employer to furnish each of his or her
27 employees with an accurate, itemized statement in writing showing the gross and net earnings, total
28 hours worked, and the corresponding number of hours worked at each hourly rate; these statements

1 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
2 the employee's wages; or, if wages are paid by cash or personal check, these statements may be
3 given to the employee separately from the payment of wages; in either case the employer must give
4 the employee these statements twice a month or each time wages are paid.

5 79. Defendants failed to provide Employees with accurate itemized wage statements in
6 writing, as required by the Labor Code. Specifically, Aggrieved Employees' wage statements did
7 not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately
8 set forth all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each such rate in violation of Labor Code § 226 (a)(9). Moreover, the wage
10 statements given to Employees failed to accurately account for unpaid wages and overtime because
11 their actual hours worked were under-reported due to off the clock work, proper regular rate
12 calculations that included shift differentials, nondiscretionary commissions, incentive pay, and/or
13 nondiscretionary bonuses earned, and the total amount of compensation of Employees.
14 Additionally, the wage statements given to Employees failed to accurately account for premium pay
15 for deficiently provided meal periods and rest breaks. Lastly, the wage statements given to
16 Employees failed to accurately specify the name and address of the employer as required under the
17 law as the wage statements provided to Employees name an entity that is not registered with the
18 California Secretary of State's Office despite the fact all businesses that wish to conduct business
19 in California need to register with the California Secretary of State's Office.

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

25 81. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the
26 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
27 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs

1 and reasonable attorneys' fees.

2 82. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil
3 penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay
4 period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each
5 pay period.

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

9 **EIGHTH CAUSE OF ACTION**
10 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
11 **AND 1174.5**
12 **(Against All Defendants)**

13 84. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
14 full herein.

15 85. California Labor Code § 1174 requires that all employers shall keep accurate time
16 and wage records for all employees. California Labor Code § 1174.5 further requires that any
17 employee suffering injury due to a willful violation of the aforementioned obligations may seek
18 damages, including civil penalties, from the employer.

19 86. During the course of Plaintiff's and Employees' employment, Defendants
20 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
21 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
22 overtime, and premium pay as discussed above.

23 87. Accordingly, Defendants are liable for civil penalties pursuant to the California
24 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

25 **NINTH CAUSE OF ACTION**
26 **VIOLATION OF LABOR CODE § 221**
27 **(Against All Defendants)**

28 88. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in

1 full herein.

2 89. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
3 receive from an employee any part of wages theretofore paid by said employer to said employee.”

4 90. Defendants unlawfully received and/or collected wages from employees. Defendants
5 unlawfully removed wages for miscellaneous deductions that Employees never agreed to in
6 violation of Labor Code § 221.

7 91. As a direct and proximate cause of the unauthorized deductions, Employees have
8 been damaged, in an amount to be determined at trial.

9 **TENTH CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
11 **IN VIOLATION OF LABOR CODE § 2802**
12 **(Against All Defendants)**

13 92. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
14 full herein.

15 93. Under Labor Code § 2802(a) an employer must indemnify its employees for all
16 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
17 of his or her duties, or of his or her obedience to the directions of the employer.

18 94. Employees incurred necessary expenditures in the performance of their job duties for
19 Defendants, the purchase of a computer and internet usage and other costs associated with working
20 from home in addition to tools and equipment such as measuring tapes and measuring sticks, which
21 were necessary to perform their duties under Defendants’ employ. From four (4) years prior to the
22 original filing of this lawsuit and continuing to the present, Defendants consistently failed to
23 reimburse Employees for these necessarily incurred business expenses.

24 95. As a result of the unlawful acts of Defendants, Employees have been deprived of
25 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
26 plus interest and penalties thereon, attorneys’ fees, and costs.

27 ///

28 ///

ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

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

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

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

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

TWELFTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.
(Against All Defendants)

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

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

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

1 104. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
2 practices.

3 105. Wage-and-hour laws express fundamental public policies. Paying employees their
4 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public
5 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
6 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
7 under substandard and unlawful conditions, and to protect law-abiding employers and their
8 employees from competitors who lower costs to themselves by failing to comply with minimum
9 labor standards.

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

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

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

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

24 110. Unless restrained by this Court Defendants will continue to engage in such unlawful
25 conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such
26 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
27 use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by
28 the Business & Professions Code, including but not limited to the disgorgement of such profits as

1 may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For an order certifying this action as a class action;
- 5 2. For compensatory damages in the amount of the unpaid minimum wages for work
6 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
7 the filing of this action, as may be proven;
- 8 3. For liquidated damages in the amount equal to the unpaid minimum wage and
9 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 10 4. For compensatory damages in the amount of all unpaid wages, including overtime
11 and double-time pay, as may be proven;
- 12 5. For compensatory damages in the amount of the hourly wage made by Employees
13 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
14 years prior to the filing of this action, as may be proven;
- 15 6. For compensatory damages in the amount of the hourly wage made by Employees
16 for each day requisite rest breaks were not provided or were deficiently provided where no
17 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
18 be proven;
- 19 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 20 8. For restitution and/or damages for all amounts unlawfully withheld from the wages
21 for all class members in violation of Labor Code § 221, as may be proven;
- 22 9. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 23 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
24 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 25 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 26 12. For penalties pursuant to Labor Code § 227.3, as may be proven;
- 27 13. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven
- 28 14. For restitution for unfair competition pursuant to Business & Professions Code

1 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

2 15. For compensatory damages in the amount of all previously unreimbursed business
3 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
4 from four (4) years prior to the original filing of this action, as may be proven;

5 16. For an order enjoining Defendants and their agents, servants, and employees, and
6 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
7 duties adumbrated in this Complaint;

8 17. For all general, special, and incidental damages as may be proven;

9 18. For an award of pre-judgment and post-judgment interest;

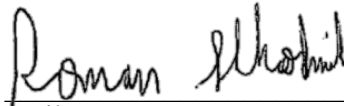
10 19. For an award providing for the payment of the costs of this suit;

11 20. For an award of attorneys' fees; and

12 21. For such other and further relief as this Court may deem proper and just.

13
14 DATED: May 24, 2024

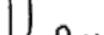
D.LAW, INC.

15
16 By 

17 Emil Davtyan
18 David Yermian
19 Roman Shkodnik
20 Amanda Fazio
21 Attorneys for Plaintiff
22 TORREAN L TYUS
23 and the putative class
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DATED: May 24, 2024

By 

 Emil Davtyan
 David Yeremian
 Roman Shkodnik
 Amanda Fazio
 Attorneys for Plaintiff
 TORREAN L TYUS
 and the putative class

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

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

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

Natalia Bermudes
Natalia Bermudes