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STEPHAN MERCADO

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County of Imperial
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Assigned for all purposes,
including trial, to Judge
Jeffrey B. Jones

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL**

STEPHAN MERCADO, an individual,

Plaintiff,

vs.

FISHERMEN'S MANNA, INC. DBA
SUBWAY, a California corporation;
MANNA DEVELOPMENT, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: ECU003574

COMPLAINT FOR:

- 1. FAILURE TO PAY MINIMUM WAGES FOR HOURS WORKED OFF-THE-CLOCK (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198; IWC Wage Order No. 5);**
- 2. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 5);**
- 3. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 4. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 5. FAILURE TO PROVIDE UNIFORM MAINTENANCE ALLOWANCE (Cal. Labor Code § 2802);**
- 6. FAILURE TO PAY FOR ALL HOURS WORKED (Cal. Labor Code § 204; Wage Order No. 5);**
- 7. REPORTING TIME PAY (Wage Order No. 5);**
- 8. FAILURE TO MAINTAIN ACCURATE RECORDS (Cal. Labor Code §1174(d));**
and
- 9. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.**

DEMAND FOR A JURY TRIAL

Stephan Mercado ("Plaintiff") alleges the following:

PARTIES

1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and a resident of Brawley, California.

2. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant Fishermen's Manna, Inc. dba Subway ("SUBWAY") is, and at all times mentioned herein was, a California corporation, with a principal place of business at 530 W. 2nd Avenue, Suite 202, Escondido, CA 92025. Subway has been authorized to do business and has been doing business in the County of Imperial.

3. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant Manna Development, LLC ("MD") (collectively with Subway "Defendants") is, and at all times mentioned herein was, a California limited liability company, with a principal place of business at 2211 Encinitas Blvd., Suite 100, Encinitas, CA 920024. MD has been authorized to do business and has been doing business in the County of Imperial.

4. Starting on or about June 5, 2023 and continuing through June 13, 2023, Defendants employed Plaintiff as a Sandwich Artist. Plaintiff greeted customers, cleaned, made sandwiches, prepared ingredients and handled transactions.

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

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

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

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

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

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

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

27 **JURISDICTION AND VENUE**

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1 11. This Court has jurisdiction over this Complaint under Code of Civil Procedure
2 §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

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

7 **Employment Information**

8 13. Plaintiff was an employee of Defendants since on or about June 5, 2023 and
9 worked as a Sandwich Artist until June 13, 2023 when he resigned. While employed by
10 Defendants, Plaintiff was paid \$15.50 per hour. Plaintiff worked about 4 hours per day, 5 days
11 per week.

12 **Wage and Hour Violations**

13 14. The employment by Defendants of Plaintiff is governed by Industrial Welfare
14 Commission Wage Order 5, which covers those persons employed in the public housekeeping
15 industry.

16 15. Defendants at times required Plaintiff to attend training off the clock. On those
17 occasions, Plaintiff was not paid for his compensable off-the-clock work. Plaintiff was also
18 required to use his personal cell phone while off the clock for work-related activities.

19 16. Under California law, non-exempt employees as defined by Wage Order 5, are
20 entitled to minimum wages. Under California law, an hourly paid employee is entitled to be
21 paid a minimum wage. Labor Code Section 1197 states the California requirement that
22 employees must be paid at least the minimum wage fixed by the Commission or by any
23 applicable state or local law, and any payment of less than the minimum wage is unlawful.
24 Similarly, Labor Code Section 1194 states “any employee receiving less than the legal
25 minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of
26 this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage Order No. 5-
27 2001, obligates employers to pay each employee minimum wages for all hours worked.

17. Defendants paid Plaintiff less than minimum wage rates due to off-the-clock work. Monies for these underpaid amounts remain due and owing.

18. Defendants failed to provide Plaintiff with any wage statements and/or check stubs, instead giving him a “Check Preview”. Further, as a result of Defendants’ failure to pay Plaintiff at required minimum wage rates, the check previews issued to him did not comply with *Labor Code* §226 and California Industrial Welfare Commission (“IWC”) Wage Order No. 5 in that they did not accurately reflect all wages earned and due and owing.

19. As a further result of Defendants' failure to pay Plaintiff at required minimum wage rates and afford rest breaks, when Plaintiff left their employ, he was not timely paid all wages due him, as required by *Labor Code* §§ 201, 202 and Wage Order No. 5.

20. Defendants required Plaintiff to use his personal cell phone for work-related purposes. Plaintiff was not reimbursed for his cell phone expenses. Additionally, Plaintiff was required to acquire a Food Handler's Certificate at his own cost and for which Defendants did not reimburse him.

21. Defendants failed to provide Plaintiff with a uniform maintenance allowance.

22. Defendants failed to pay Plaintiff for all hours worked.

23. Defendants failed to maintain accurate records.

24. Defendants failed to pay Plaintiff reporting time pay.

25. Pursuant to the California Labor Code, Plaintiff intends to file a notice with Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to amend this Complaint once he completes and complies with the provisions under the law.

FIRST CAUSE OF ACTION

**FOR FAILURE TO PAY MINIMUM WAGES FOR HOURS WORKED OFF-THE-
CLOCK**

(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 5 By Plaintiff Against all Defendants and Does 1 through 100)

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

3 27. *Labor Code* § 1197 states the California requirement that employees must be
4 paid at least the minimum wage fixed by the Commission, and any payment of less than the
5 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
6 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
7 the full amount of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to
8 pay each employee minimum wages for all hours worked. These minimum wage standards
9 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
10 failure to pay for any particular hour of time worked by an employee is unlawful, even if
11 averaging an employee’s total pay over all hours worked, paid or not, results in an average
12 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
13 (2005).

14 28. Here, Plaintiff engaged in off-the-clock activities. At times Plaintiff was
15 required to attend training for about 7 hours off the clock. Defendants failed to pay Plaintiff for
16 these off-the clock activities and as result thereof, Plaintiff was not paid minimum wages that
17 were due to him.

18 29. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
19 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
20 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

21 30. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
22 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
23 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
24 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
25 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
26 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
27 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
28

1 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
2 (N.D. Cal. 2016).

3 31. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
4 of compensation due and owing to him as a direct result of Defendant's unlawful acts and
5 Labor Code violations in an amount to be shown according to proof at trial and within the
6 jurisdictional limitations of this Court.

7 32. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
8 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
9 Court assess said penalty against Defendants, and each of them, in an amount within the
10 jurisdiction of this Court, to be proven at trial.

11 33. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558,1194 and
12 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants
13 owe him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
14 according to proof.

15 34. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
16 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

17 **SECOND CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

19 **(Labor Code §226 By Plaintiff Against Defendants and Does 1 through 100)**

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

22 36. At all times relevant hereto, Defendants failed to issue payrolls statements to
23 Plaintiff which complied with *Labor Code* § 226.

24 37. Defendants failed to issue any required wage statements to Plaintiff.

25 38. Plaintiff was given checks and a "Check Preview" at the time he was given his
26 checks. The Check Previews are not compliant with *Labor Code* § 226 and do not purport to be
27 "check stubs". Indeed, the "Check Preview" states: "This check preview feature is not intended
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1 to be used in place of an official check stub.” However, Plaintiff was never provided with any
2 check stubs.

3 39. Further, the dates of the applicable pay periods are not provided on any of the
4 Check Previews that were given to Plaintiff. The date listed on the Check Previews is June 27,
5 2023, which would have been 2 weeks after the close of the payroll period. The actual checks
6 are dated June 13, 2023 and June 15, 2023.

7 40. Defendants knowingly and intentionally failed to comply with *Labor Code*
8 §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
9 expended calculating the actual hours worked and the amount of employment taxes which were
10 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
11 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
12 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
13 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys’ fees and costs.

14 41. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
15 attorneys’ fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).
16

17 **THIRD CAUSE OF ACTION**

18 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

19 **(Labor Code §§201-203 By Plaintiff Against Defendants and Does 1 through 100)**

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

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

25 44. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
26 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
27 paid, not to exceed thirty days.
28

1 45. Plaintiff resigned from Defendants' employ and Defendants willfully failed to
2 pay Plaintiff minimum wages, reporting time pay, pay for all hours worked and other wages
3 due him.

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

6 **FOURTH CAUSE OF ACTION**

7 **REIMBURSEMENT OF BUSINESS EXPENSES**

8 **(Cal. Labor Code §2802 By Plaintiff Against Defendants and Does 1 through 100)**

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

11 48. Labor Code §2802 requires employers to indemnify employees for all necessary
12 expenditures incurred by employees in the discharge of his duties.

13 49. At all times relevant herein, Defendants were aware that Plaintiff was using his
14 personal cell phone for business such as training for 5 hours and for purchase of a Food
15 Handler's Certificate, but failed to indemnify Plaintiff for all his business-related expenses,
16 including wear and tear expenses, in accordance with Labor Code §2802. Plaintiff was required
17 to use his personal cell phone off the clock for work-related activities, such as training via
18 "Subway University".

19 50. As a result of Defendants' conduct, Plaintiff suffered damages in an amount,
20 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
21 incurred in the discharge of his duties.

22 51. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
23 his unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE UNIFORM MAINTENANCE ALLOWANCE**

26 **(Cal. Labor Code § 2802 By Plaintiff Against all Defendants and Does 1 through 100)**

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

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

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

55. Here, Defendants required Plaintiff to wear a t-shirt, apron and hat. However, Defendants did not maintain the uniforms. Plaintiff was required to clean the uniforms himself.

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

(Cal. Labor Code § 204; IWC Wage Order No. 5 By Plaintiff against all Defendants and Does 1 through 100)

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

59. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of the California Labor Code.

60. California Labor Code section 204 requires an employer, such as Defendants, to pay employees for all work performed on the job.

61. Section 4 of the applicable Wage Order requires that employers pay employees for all hours worked.

62. At all times relevant herein, Defendants were required to compensate Plaintiff for all hours worked pursuant to the applicable Wage Orders, and Cal. Labor Code §§200, 223, 226, 500, 510, 1197, 1198.

1 63. Defendants have knowingly and willfully refused to perform their obligations to
2 compensate Plaintiff for all hours worked.

3 64. Defendants required, suffered or otherwise permitted Plaintiff to attend
4 mandatory trainings without compensating him for the time he spent training. Plaintiff was
5 required to attend training via "Subway University" for approximately 5 hours. Further,
6 Plaintiff was required to attend training to get his Food Handlers' Certificate for about 2 hours.

7 65. By requiring Plaintiff to attend mandatory training off the clock, Defendants
8 have willfully violated California Labor Code section 204.

9 66. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
10 repayment of the amounts unlawfully not paid, in an amount to be ascertained at the trial of
11 the matter according to proof, plus interest thereon and attorneys' fees pursuant to California
12 Labor Code Sections 218.5 and 1194 and costs pursuant to Labor Code Section 218.6.

13 **SEVENTH CAUSE OF ACTION**

14 **REPORTING TIME PAY**

15 **(Wage Order No. 5 By Plaintiff Against Defendants and Does 1 through 100)**

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

18 68. Wage Order 5-2001 provides that "[e]ach workday an employee is required to
19 report for work and does report, but is not put to work or is furnished less than half said
20 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
21 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours,
22 at the employee's regular rate of pay, which shall not be less than the minimum wage."

23 69. Defendants failed to give Plaintiff a fixed work schedule. Plaintiff was called to
24 work as needed. Although Plaintiff was given a schedule, his manager would adjust it, resulting
25 in last minute work requests and schedule changes. Defendants required Plaintiff to be on call.
26 Plaintiff received text messages from his manager asking him to come to work on the same day
27 or the next day and Plaintiff was texted at the last minute regarding his schedule.

28

1 70. This has resulted in Defendants failing to pay required reporting time pay to
2 Plaintiff.

3 71. As a direct and proximate results of Defendants' actions as set forth herein,
4 Plaintiff has been damaged in that Plaintiff has not been paid all required reporting time pay.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO MAINTAIN ACCURATE RECORDS**

7 **(Cal. Labor Code §1174 (d) By Plaintiff Against all Defendants and Does 1 through 100)**

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

10 73. Labor Code section 1174(d) requires that employers, including Defendants,
11 maintain accurate records showing the hours worked daily by its employees and to whom
12 wages were paid.

13 74. Additionally, the "Records" section of the applicable IWC Wage Order
14 obligates the employer, including Defendant, to keep accurate information with respect to each
15 one of their employees including, but not limited to, the total wages paid each payroll period,
16 and time records showing when the employee begins and ends each work period, the total
17 daily hours worked, the total hours worked in the payroll period, and the applicable rates of
18 pay.

19 75. Pursuant to Labor Code section 1174.5, any person employing labor who
20 willfully fails to maintain accurate and complete records required by Labor Code section
21 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to
22 maintain accurate records regarding Plaintiff, because Plaintiff was not paid for a 3-hour shift
23 he worked on June 5, 2023. Defendants' weekly payroll report for 5/31/2023-6/6/2023 do not
24 show those hours recorded.

25 76. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
26 and continues to suffer substantial losses related to Defendants' failure to pay minimum
27 wages, for all hours worked and reporting time pay.

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1 77. Plaintiffs seeks all available remedies for Defendants’ violations including, but
2 not limited to penalties, and costs to the extent permitted by law.

3 **NINTH CAUSE OF ACTION**

4 **FOR UNFAIR COMPETITION**

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

7 78. Plaintiff realleges and incorporates by reference all of the allegations set forth in
8 this

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

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

16 81. The prompt payment of minimum wages, reimbursement of business expenses,
17 paying a uniform maintenance allowance, paying for all hours worked, reporting time pay,
18 issuing wage statements, paying all wages due on termination, maintaining accurate records,
19 are fundamental public policies of California. It also is the public policy of California to
20 enforce minimum labor standards to ensure that employees are not required to or permitted to
21 work under substandard and unlawful conditions and to protect those employers who comply
22 with the law from losing competitive advantage to other employers who fail to comply with
23 labor standards and requirements.

24 82. Through the conduct alleged herein, Defendants acted contrary to these public
25 policies and have thus engaged in unlawful and/or unfair business practices in violation of
26 *Business & Professions Code* §§ 17200 et seq., depriving Plaintiff of the rights, benefits and
27 privileges guaranteed to employees under California law.
28

83. Defendants regularly and routinely violated the following statutes and regulations with respect to Plaintiff:

- (a) *Labor Code* § 1197 and IWC Wage Order No. 5 (failure to pay minimum wages);
- (b) *Labor Code* § 226 (failure to provide accurate wage statements to employees at the time of payment of wages);
- (c) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
- (d) *Labor Code* § 2802 (failure to reimburse business expenses);
- (e) *Labor Code* § 2802 (failure to provide uniform maintenance allowance);
- (f) Wage Order No. 5 (failure to pay reporting time pay);
- (g) *Labor Code* §§ 200, 204, 223, 226, 500, 510, 1197, 1198 (failure to pay for all hours worked; and
- (h) *Labor Code* § 1174 (d) (failure to maintain accurate records).

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

PRAYER FOR RELIEF

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

1. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff, in an amount within the jurisdiction of this Court, according to proof,
2. For compensatory damages in the amount of Plaintiff's out of pocket expenses for cell phone use and Food Handlers' Certificate and/or reimbursement of monies incurred while performing Defendants' business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

- 1 3. For compensatory damages in the amount of Plaintiff's uniform maintenance
2 expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
- 3 4. Reporting time pay;
- 4 5. For compensatory damages in the amount of unpaid wages due to failure to pay
5 for all hours worked;
- 6 6. For payment of unpaid wages in accordance with California labor and
7 employment law;
- 8 7. For an award of consequential damages in Plaintiff's favor and against
9 Defendants, in an amount to be proven at trial;
- 10 8. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 11 9. Pursuant to Labor Code § 203, for an additional sum according to proof equal of
12 up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;
- 13 10. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
14 §203, in an amount equal to his respective daily rates of pay at the time of termination or
15 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
16 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
17 days' pay, according to proof;
- 18 11. For specific relief enforcing waiting time penalties of 30 days of per diem wages
19 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
- 20 12. For prejudgment interest accrued on all due and unpaid minimum wages and
21 unpaid wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code*
22 §§218.6 and 1194(a), according to proof;
- 23 13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 1174.5,
24 according to proof;
- 25 14. For reasonable costs, including attorneys' fees, in an amount according to proof
26 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 2802;
- 27 15. For an award of restitution of wages to Plaintiff in an amount equal to the
28 amount of wages owed and unpaid, according to proof;

1 16. For injunctive relief ordering the continuing unfair business acts and practices to
2 cease, as the Court deems just and proper;

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

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

6 19. For prejudgment interest, according to proof;

7 20. For costs of suit, generally and pursuant to Code of Civil Procedure § 1021.5;
8 and

9 21. For such other and further relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff Stephan Mercado hereby respectfully requests a trial by jury for all claims and
12 issues raised in his Complaint that may be entitled to a jury trial.

13
14 LIPELES LAW GROUP, APC

15 Date: June 17, 2024

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17 By: 
18 _____
19 Kevin A. Lipeles
20 Attorneys for Plaintiff
21 Stephan Mercado
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