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14 **SUPERIOR COURT OF CALIFORNIA**

15 **COUNTY OF KERN**

16 BRIAN FLORES LOPEZ, individually and
17 on behalf of all individuals similarly
18 situated,

19 Plaintiff,

20 vs.

21 PREMIER CRANE &
22 TRANSPORTATION, INC., a California
23 corporation; LYNN GUDMUNDSON JR,
24 an individual; and DOES 1 through 50,
25 inclusive,

26 Defendants.

CASE NO. BCV-24-102002

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. **FAILURE TO COMPENSATE ALL HOURS
WORKED IN VIOLATION OF INDUSTRIAL
WELFARE COMMISSION ORDER NO. 9
AND CAL. LABOR CODE §§ 200, 226, 500,
510, 1194, 1197, AND 1198;**
2. **FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
INDUSTRIAL WELFARE COMMISSION
ORDER NO. 9 AND CAL. LABOR CODE §§
200, 226, 500, 510, 1194, 1197, AND 1198;**
3. **FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF LABOR CODE §§ 1182.12,
1194, 1194.2, 1197;**
4. **MISSED MEAL AND REST BREAKS IN
VIOLATION OF CAL. LABOR CODE §§ 200,
226.7, 512, 516, 558, and 1198;**
5. **FAILURE TO PROVIDE PROPER WAGE
STATEMENTS IN VIOLATION OF CAL.
LABOR CODE § 226;**

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- 6. **FAILURE TO PAY COMPENSATION UPON SEPERATION OF EMPLOYMENT IN VIOLATION OF CAL. LABOR CODE § 201-203;**
- 7. **VIOLATIONS OF CAL. B&P CODE §§ 17200, *ET SEQ.*;**
- 8. **VIOLATION OF LABOR CODE §§ 2698, *ET SEQ.* (“PAGA”)**

DEMAND FOR JURY TRIAL

1 Plaintiff BRIAN FLORES LOPEZ, an individual and on behalf of all individuals similarly
2 situated (“Plaintiff”), hereby brings this First Amended Class Action Complaint for Damages against
3 Defendants PREMIER CRANE & TRANSPORTATION, INC. (“PREMIER”), a California
4 corporation; LYNN GUDMUNDSON JR (“GUDMUNDSON”), an individual; and DOES 1 through
5 50, inclusive, (collectively, “Defendants”) and states and alleges as follows:

6 **THE PARTIES**

7 1. Plaintiff was, at all times relevant to this Complaint, an adult individual living and
8 working in Kern County, California.

9 2. At all times relevant to this Complaint, Defendant PREMIER is and was a California
10 corporation operating a business within the State of California, specifically in the County of Kern.

11 3. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
12 fictitious names DOES 1–50 but prays for leave to amend and serve such fictitiously named Defendants
13 pursuant to California Code of Civil Procedure section 474 once their names and capacities become
14 known.

15 4. Plaintiff is informed and believes, and thereon alleges, that DOES 1–50 are the partners,
16 agents, owners, shareholders, managers, principals or employees of Defendants and/or were acting on
17 behalf of Defendants.

18 5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
19 omissions alleged herein was performed by or is attributable to Defendants and/or DOES 1–50, each
20 acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and
21 all Defendants were in accordance with, and represent the policy of, all Defendants.

22 6. At all times herein mentioned, Defendants, and each of them, ratified each and every
23 act or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
24 aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing
25 the damages herein alleged.

26 7. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
27 in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences
28 and transactions alleged herein.

1 **JURISDICTION**

2 8. This action is properly filed in Kern County because the acts and omissions that give
3 rise to Plaintiff's claims took place in Kern County, California, as Plaintiff was employed by
4 Defendants in Los Angeles County, California, and Defendants transact business in this County.

5 9. This Court has jurisdiction over Defendants because Defendants have sufficient
6 minimum contacts with and regularly conduct business within the State of California, specifically in
7 the County of Kern.

8 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

9 10. GUDMUNDSON owned and/or controlled the businesses operated by PREMIER, and
10 furthermore, GUDMUNDSON exercised control over the labor practices of each and every one of the
11 employees (inclusive of Plaintiff) of each and every one of their said interests, and caused the violations
12 at issue in this Complaint.

13 11. Based on the foregoing allegations, GUDMUNDSON, in fact, caused violations at-issue
14 in this Complaint, thereby creating individual liability under Labor Code § 558.1.

15 12. Pursuant to the provisions of Labor Code § 558, the liability of GUDMUNDSON would
16 include any and all amounts sufficient to recover any and all missed meal and rest break premiums,
17 unpaid wages, and failure to reimburse necessary business expenses to Plaintiff and the Class Members.

18 13. As further referenced hereinbelow, the viability of obtaining liability of individuals by
19 this method was discussed by the California Supreme Court in *Reynolds v. Bement* (2005) 36 Cal.4th
20 1075, 1089 where the court noted that individual liability against non-employers could be obtained
21 through the use of § 558.

22 14. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
23 unity of interest and ownership between PREMIER, GUDMUNDSON, and DOES 1-50 that the
24 individuality and separateness of defendants has ceased to exist.

25 15. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
26 of purported corporate existence, PREMIER, GUDMUNDSON, and DOES 1-50 are, in reality, one
27 and the same, including, but not limited to because:

28 a. PREMIER is or was completely dominated and controlled by GUDMUNDSON and

DOES 1-50, who personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden and currently hide behind PREMIER to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

b. GUDMUNDSON and DOES 1-50 have acted on behalf of PREMIER, who violate, or cause to be violated, the provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 203, 226, 226.7, 510, 1194, 1197, or 2802.

c. GUDMUNDSON and DOES 1-50 have acted on behalf of PREMIER, who violate, or cause to be violated, the provisions regulating meal and rest breaks in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 226.7, and 512.

d. GUDMUNDSON and DOES 1-50 have acted on behalf of PREMIER, who violate, or cause to be violated, the provisions regulating reimbursement of necessary business expenses in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 2802.

e. GUDMUNDSON and DOES 1-50 derive actual and significant monetary benefits by and through PREMIER as the funding source for their own personal expenditures.

f. Plaintiff is informed and believes that GUDMUNDSON, PREMIER, and DOES 1-50, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

g. Plaintiff is informed and believes that PREMIER does not or did not comply with all requisite corporate formalities to maintain a legal and separate corporate existence.

h. Plaintiff is informed and believes, and based thereon alleges, that the business affairs of GUDMUNDSON, PREMIER, and DOES 1-50 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion.

i. PREMIER is, and at all times relevant hereto was, used by GUDMUNDSON and DOES

1 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and
2 was, the alter ego of GUDMUNDSON and DOES 1-50. The recognition of the separate
3 existence of PREMIER, and/or GUDMUNDSON would not promote justice, in that it would
4 permit Defendants to insulate themselves from liability to Plaintiffs for violations of the Labor
5 Code. The corporate existence of GUDMUNDSON, PREMIER, and DOES 1-50 should be
6 disregarded in equity and for the ends of justice because such disregard is necessary to avoid
7 fraud and injustice to Plaintiff herein.

8 16. Accordingly, PREMIER constitutes the alter egos of GUDMUNDSON and DOES 1-
9 50, and the fiction of their separate corporate existence must be disregarded.

10 17. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
11 thereon alleges that PREMIER, GUDMUNDSON, and DOES 1-50 are Plaintiff's joint employers by
12 virtue of a joint enterprise, and that Plaintiff was an employee of PREMIER, GUDMUNDSON, and
13 DOES 1-50. Plaintiff performed services for each and every one of Defendants, and to the mutual
14 benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly
15 or indirectly, and the manner in which Defendants' business was and is conducted.

16 **FACTUAL ALLEGATIONS**

17 18. Plaintiff worked for Defendants as an hourly, non-exempt employee in the position of
18 "Truck Driver" and was employed by Defendants from on or around May 5, 2021, until December 19,
19 2023. Plaintiff works primarily at Defendants' workplace located at 3131 Wear Street, Bakersfield, CA
20 90703..

21 19. Plaintiff's job duties included but were not limited to transporting materials with an 18-
22 wheeler. Plaintiff's regular scheduled varied greatly, but he often worked over eight (8) hours in a day
23 from Monday through Friday, and he worked every other weekend as well.

24 20. Despite the fact that Plaintiff and the Class's regular shifts would push Plaintiff and the
25 Class Members' total working hours to more than eight (8) hours a day, Defendants did not properly
26 compensate Plaintiff and the Class Members with accurate overtime rates. Specifically, Defendants
27 paid Plaintiff and the Class Members their regular rate only for the most of their hours worked, even if
28 it was more than eight hours in a day. Additionally, Defendants would clock Plaintiff out before his

1 shift was over and modify to adjust his hours worked. Defendants also incorrectly told Plaintiff that
2 overtime restarted at midnight each day, so any overnight shifts worked did not get paid at the correct
3 overtime rate.

4 21. Throughout their employment with Defendants, Plaintiff and the Class Members
5 routinely worked for Defendants without being provided with proper thirty-minute timely and
6 uninterrupted, duty-free meal periods. Specifically, Plaintiff and the Class Members would be forced
7 to work through most of their meal breaks. Defendants would also force Plaintiff to clock out for his
8 meal breaks even though he had to keep working, and they forced Plaintiff to submit a form saying that
9 he had taken his breaks even when he did not.

10 22. Despite the aforementioned, during their employment with Defendants, Plaintiff and the
11 Class Members were not paid one (1) hour of pay at their regular rate of compensation as the premium
12 penalty under the California Labor Code for each workday where a legally compliant meal period was
13 not provided.

14 23. Additionally, throughout their employment with Defendants, Plaintiff and the Class
15 Members routinely worked for Defendants without being provided with a timely, off-duty ten-minute
16 paid rest period for every four (4) hours worked or major fraction thereof. Specifically, Plaintiff would
17 be unable to take any rest breaks due to Defendants' business practices.

18 24. Despite the aforementioned, during their employment with Defendants, Plaintiff and the
19 Class Members were not paid one (1) hour of pay at their regular rate of compensation for each work
20 day where a legally compliant rest period was not provided.

21 25. As a result of Defendants' failure to pay all hours worked, failure to pay proper overtime
22 wages, and failure to pay all meal and rest premiums, Defendants maintained inaccurate payroll
23 records, and issued inaccurate wage statements to Plaintiff and the Class Members.

24 26. Defendants have engaged in, and continue to engage in, unfair business practices in
25 California by practicing, employing, and utilizing the employment practices and policies outlined
26 above. Defendants' utilization of such unfair business practices constitutes unfair competition and
27 provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
28 business practices deprives Plaintiff and the Class Members of the general minimum working standards

1 and entitlements due to them under California law and the Industrial Welfare Commission wage orders
2 as described herein.

3 27. As a direct result of the wage and hour violations herein alleged, Plaintiff and the Class
4 Members have suffered, and continue to suffer, substantial losses related to the use and enjoyment of
5 wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants
6 to fully perform their obligations under state law, all to their respective damage in amounts according
7 to proof at the time of trial.

8 28. On June 11, 2024, Plaintiff sent a notice of filing the Private Attorney General Act
9 (“PAGA”) claim to Labor Workforce and Development Agency (“LWDA”) pursuant to California
10 Labor Code §§ 2698, et seq., and paid \$75 to LWDA as a fee for filing the PAGA notice.

11 **CLASS ACTION ALLEGATIONS**

12 29. Plaintiff brings this action as a class action on behalf of the following defined Class:

13 The Class: All individuals who have been, or currently are, employed by Defendants, and who
14 worked at least one shift in California as “non-exempt employees” during the Class Period.

15 30. “Class Period” is defined as the time from June 12, 2020, through the date that judgment
16 is entered, based upon information and belief that the violations, as described more fully hereinafter,
17 began long before June 12, 2020, and are continuing. Plaintiff and members of Class herein reserve
18 the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

19 31. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during the
20 Class Period, dozens of Class members have been employed by Defendants as non-exempt employees
21 in the State of California. Because so many persons have been employed by Defendants in this capacity,
22 the members of the Plaintiffs’ Class are so numerous that joinder of all members is impossible and/or
23 impracticable.

24 32. Commonality: Common questions of law, in fact, exist as to all members of the
25 Plaintiffs’ Class *and predominate over any questions affecting solely individual members of the*
26 *Plaintiffs’ Class. Among the questions of law and fact, that are relevant to the adjudication of Class*
27 *members claims are as follows:*
28

- 1 (a) Whether Defendants had/have policies and/or practices that result in hours worked not
2 being properly compensated;
- 3 (b) Whether Defendants unlawfully failed to properly calculate and pay overtime
4 compensation due and owing to the Plaintiffs and members of the Class in violation of Labor
5 Code § 1194;
- 6 (c) Whether Defendants' policy and/or practice of failing to accurately pay overtime to
7 Plaintiffs and members of the Class violates applicable provisions of California Law, including
8 Labor Code sections, applicable Industrial Welfare Commission Orders, and applicable State
9 Regulations;
- 10 (d) Whether Defendants had/have a policy and/or practice that results in the presentation of
11 inaccurate wage statements to Plaintiff and the Class;
- 12 (e) Whether Defendants unlawfully and/or willfully failed to furnish Plaintiff and Class
13 members with accurate, itemized wage statements upon payment of wages in violation of Labor
14 Code § 226;
- 15 (f) Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members
16 of meal and rest breaks and pay for missed breaks pursuant to Labor Code §§ 200, 226.7, 512,
17 and 8 CCR § 11010;
- 18 (g) Whether Plaintiff and Class members sustained damages, and if so, the proper measure
19 of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief; and,
- 20 (h) Whether Defendant violated the Unfair Competition Law of California, §17200, *et seq.*,
21 by violating the above-cited provisions, and treating Plaintiff and Class members unfairly by
22 failing to pay all wages due and for all hours worked; failing to provide meal and rest breaks;
23 and failing to furnish an accurate, itemized wage statement upon payment of wages.

24 33. Typicality: Plaintiff's claims are typical of the members of the Plaintiff's Class.
25 Plaintiff, like other members of the Class working for Defendants in California, was subjected to
26 Defendants' policies and/or practices set forth above. Plaintiff's job duties were, and are, typical of
27 those of other Class members.
28

34. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in both class action and employment litigation.

35. Questions of law or fact common to Class members predominate over any questions solely affecting individual Class members and class action is superior to other available methods for the fair and efficient adjudication of this controversy.

36. Class action treatment will allow a large number of similarly situated Class members to simultaneously and efficiently prosecute his common claims in a single forum without the needless duplication of effort and expense that numerous individual actions would entail.

37. In addition, a class action will serve the important public interest of permitting Class members harmed by Defendants' unlawful policies and/or practices to effectively pursue recovery of the sums owed to them.

38. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

**FAILURE TO COMPENSATE ALL HOURS WORKED IN VIOLATION OF
INDUSTRIAL WELFARE COMMISSION ORDER NO. 4 AND LABOR CODE §§ 200, 226,
500, 510, 1194, 1197, AND 1198
(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

39. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

40. At all times relevant herein, Defendants were required to compensate its non-exempt employees for all hours worked, pursuant to Industrial Welfare Commission Order 4, and Labor Code §§ 200, 226, 500, 510, 1197, 1194 and 1198.

41. As alleged above, Plaintiff and the Class were not paid the correct wage for all hours worked, due to their not being paid their proper overtime rates nor being paid premiums on any missed meal and rest breaks.

42. Under the aforementioned wage orders and regulations, Plaintiff and the Class are entitled to recover compensation for all hours worked, but not paid, during the Class Period, plus reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5, 1194, and penalties pursuant to Labor Code §§ 203 and 226.

43. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial.

44. Plaintiff and the Class are thus entitled to recover nominal, actual and compensatory damages in amount according to proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

45. As a proximate result of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial.

46. Defendants' conduct described herein violates Industrial Welfare Commission Order 4, and Labor Code §§ 200, 203, 218.5, 226, 558, 1194, and 1198. Therefore, pursuant to 8 CCR § 11010 and Labor Code §§ 203, 218.5, 226, 558, 1194 and 1198, Plaintiff and the Class are entitled to recover damages for the nonpayment of wages of all hours worked that were improperly deducted and/or not counted as a result of Defendants' policies, liquidated damages for underpayment of minimum wages, penalties, reasonable attorneys' fees, expenses, and costs of suit.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

**FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF INDUSTRIAL
WELFARE COMMISSION ORDER NO. 9 AND CAL. LABOR CODE §§ 200, 226, 500, 510,
1194, 1197, AND 1198**

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

47. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein,

1 the allegations contained in all preceding paragraphs.

2 48. Pursuant to the applicable Industrial Welfare Commission Order and Labor Code §§
3 200, 226, 500, 510, 1194, and 1198, Defendants were required to compensate Plaintiff and the Class
4 for all overtime work performed for the benefit of Defendants, which is calculated at one and one-half
5 (1-1/2) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty
6 (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day.

7 49. Plaintiff and the Class were non-exempt employees entitled to the protections of the
8 Industrial Welfare Commission and Labor Code §§ 200, 226, 500, 510, 1194, and 1198. During the
9 course of Plaintiff's and the Class' employment, Defendants failed to compensate Plaintiff and the
10 Class for all overtime hours worked as required under the aforementioned labor codes and regulations.

11 50. In violation of state law, Defendants have knowingly and willfully refused to perform
12 their obligations to compensate Plaintiff and the Class for all overtime wages earned and all hours
13 worked.

14 51. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
15 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
16 expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under
17 state law, all to his damage in amounts according to proof at time of trial, but in amounts in excess of
18 the minimum jurisdiction of this Court.

19 52. Defendants have committed the acts alleged herein knowingly and willfully, with the
20 wrongful and deliberate intention of injuring Plaintiff, from improper motives amounting to malice,
21 and in conscious disregard of Plaintiff's and the Class' rights. Plaintiff and the Class are thus entitled
22 to recover nominal, actual and compensatory damages in amounts according to proof at time of trial,
23 but in amounts in excess of the minimum jurisdiction of this Court.

24 53. Defendants' conduct described herein violates the Industrial Welfare Commission
25 Orders and Labor Code §§ 200, 226, 500, 510, and 1198. Therefore, pursuant to Labor Code §§ 200,
26 203, 226, 226.7, 558 and 1194, Plaintiff and the Class are entitled to recover the unpaid balance of
27 overtime compensation Defendants owe Plaintiff and the Class plus interest, penalties, attorneys' fees,
28 expenses, and costs of suit.

1 WHEREFORE, Plaintiff request relief as hereinafter provided.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF**

4 **CAL. LABOR CODE §§ 1182.12, 1194, 1194.2, 1197**

5 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

6 54. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein,
7 the allegations contained in all preceding paragraphs.

8 55. Pursuant to Labor Code § 1197, payment of less than the minimum wage fixed by law
9 is unlawful. An employer violates the minimum wage statute even if the average rate for paid and
10 unpaid hours exceeded the minimum wage.

11 56. At all relevant times, Defendants failed and refused to pay Plaintiff and the Class the
12 legal minimum wage in the State of California, as set forth in Labor Code §1182.12. Under California
13 law, Plaintiff and the Class are entitled to at least the minimum wage for every hour worked.

14 57. Defendants' failure to pay the legal minimum wage to Plaintiff and the Class as alleged
15 herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff and
16 the Class in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated
17 as the difference between the straight time compensation paid and applicable minimum wage, including
18 interest thereon.

19 58. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
20 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
21 expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under
22 state law, all to his damage in amounts according to proof at time of trial, but in amounts in excess of
23 the minimum jurisdiction of this Court.

24 59. Defendants have committed the acts alleged herein knowingly and willfully, with the
25 wrongful and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting
26 to malice, and in conscious disregard of Plaintiff and the Class' rights. Plaintiff and the Class are thus
27 entitled to recover nominal, actual and compensatory damages in amounts according to proof at time
28 of trial, but in amounts in excess of the minimum jurisdiction of this Court.

60. Pursuant to Labor Code § 1194, Plaintiff requests that the court award reasonable attorneys' fees and costs incurred by Plaintiffs in this action.

61. In addition, pursuant to Labor Code §1194.2, Plaintiff and the Class are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

WHEREFORE, Plaintiff request relief as hereinafter provided.

FOURTH CAUSE OF ACTION

MISSED MEAL AND REST BREAKS IN VIOLATION OF

CAL. LABOR CODE §§ 200, 226.7, AND 512

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

62. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

63. Throughout the employment of Plaintiff and the Class, Defendants failed to provide all meal and rest breaks as required by law.

64. In addition, Defendants failed to pay Plaintiff and the Class the full statutory penalty for all missed meal and rest periods.

65. Plaintiff and the Class are entitled to recover additional compensation for all meal and rest periods that were missed, but not paid for during his employment, plus penalties pursuant to Labor Code §§ 226.7 and 558.

66. Defendants' conduct described herein violates the Industrial Welfare Commission Order 1 sections 10 and 11, and Labor Code §§ 200, 226, 226.7, 512, 558, and 1198, and 12 California Code of Regulations § 11050.

67. As a proximate result of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial and has suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, and lost interest on such monies in seeking to compel Defendants to fully perform their obligation under state law. Plaintiff and the Class are thus entitled to recover nominal, actual, and compensatory damages in an amount according to proof at time of trial.

1 WHEREFORE, Plaintiff requests relief as hereinafter provided.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE PROPER WAGE STATEMENTS**

4 **IN VIOLATION OF CAL. LABOR CODE § 226**

5 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

6 68. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein,
7 the allegations contained in all preceding paragraphs.

8 69. Labor Code §226(a) sets forth reporting requirements for employers when they pay
9 wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her
10 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
11 by the employee . . . (8) the name and address of the legal entity that is the employer..."

12 Section (e) provides: "An employee suffering injury as a result of a knowing and intentional
13 failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all
14 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
15 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
16 aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and
17 reasonable attorneys' fees."

18 70. Defendants failed to accurately record the total wages due to Plaintiff and the Class, and
19 total wages due.

20 71. Plaintiff and the Class were damaged by this failure to provide accurate wage statements
21 because, among other things, Plaintiff was unable to determine the proper amount of wages actually
22 owed to him, and whether he had received full compensation therefore.

23 72. Plaintiff requests recovery of Labor Code § 226(e) penalties according to proof, as well
24 as interest, attorneys' fees and costs pursuant to Labor Code § 226(e), and all other damages, attorneys'
25 fees, costs, expenses and interest permitted by statute.

26 WHEREFORE, Plaintiff requests relief as hereinafter provided.

27 **SIXTH CAUSE OF ACTION**

28 **FAILURE TO PAY COMPENSATION UPON SEPARATION OF EMPLOYMENT IN**

1 **VIOLATION OF CAL. LABOR CODE § 201-203**
2 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

3 73. Plaintiff repeats and re-alleges the allegations set forth above and incorporates the same
4 by reference as though fully set forth herein.

5 74. Labor Code § 201 provides, in relevant part, “[i]f an employer discharges an employee,
6 the wages earned and unpaid at the time of discharge are due and payable immediately.”

7 75. Labor Code § 202 provides, in relevant part, “[i]f an employee not having a written
8 contract for a definite period quits his or her employment, his or her wages shall become due and
9 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
10 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
11 quitting.”

12 76. Pursuant to Labor Code § 201, upon Class members’ separations, Defendants were
13 required to pay all earned wages.

14 77. Defendants failed to compensate Class members their entitled wages by failing to
15 compensate them for all hours worked including meal premiums, failing to compensate them proper
16 overtime wages, and failing to provide wage statements reflecting the accurate number of hours worked
17 per pay period. The Class members’ wages remained unpaid even after their separation from
18 employment.

19 78. The Class Members are entitled to “waiting time” penalties under Labor Code § 203.

20 WHEREFORE, Plaintiff requests relief as hereinafter provided.

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATIONS OF CAL. B&P CODE §§ 17200, *et seq.***

23 **(By PLAINTIFF AGAINST ALL DEFENDANTS)**

24 79. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein,
25 the allegations contained in all preceding paragraphs.

26 80. Section 17200 of the California Business and Professions Code prohibits any unlawful,
27 unfair or fraudulent business act or practice.

28 81. Plaintiff and the Class have suffered and continues to suffer injury in fact and monetary

1 damages as a result of Defendants' actions. The actions by Defendants as herein alleged amount to
2 conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business
3 practices in violation of Business and Professions Code § 17200, *et seq.*

4 82. Defendants' conduct as herein alleged has damaged Plaintiff by denying his wages due
5 and payable, by failing to provide meal and rest periods, and by failing to provide proper wage
6 statements. Defendants' actions are thus substantially injurious to Plaintiff causing him injury in fact
7 and loss of money.

8 83. As a result of such conduct, Defendants have unlawfully and unfairly obtained monies
9 due to Plaintiff.

10 84. The amount of wages due Plaintiff can be readily determined from Defendants' records.
11 Plaintiff is entitled to restitution of monies due and obtained by Defendants during the last four years
12 as a result of Defendants' unlawful and unfair conduct.

13 85. Defendants' course of conduct, acts, and practices in violation of the California law as
14 mentioned in each paragraph above constitutes a separate and independent violation of § 17200 *et seq.*
15 of the Business and Professions Code.

16 86. The harm to Plaintiff of being wrongfully denied lawfully earned and unpaid wages
17 outweighs the utility, if any, of Defendants' policies and practices and, therefore, Defendants' actions
18 described herein constitute an unfair business practice or act within the meaning of Business and
19 Professions Code § 17200.

20 87. Defendants' conduct described herein threatens an incipient violation of California's
21 wage and hour laws, and/or violates the policy or PREMIER of such laws, or otherwise significantly
22 threatens or harms competition.

23 88. Defendants' course of conduct described herein further violates Business and
24 Professions Code 17200 in that it is fraudulent, improper, and unfair.

25 89. The unlawful, unfair, and fraudulent business practices and acts of Defendants as
26 described herein above have injured Plaintiff in that he was wrongfully denied the timely and full
27 payment of wages due to him.

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 2698, ET SEQ. (“PAGA”)**

3 **(By PLAINTIFF AGAINST ALL DEFENDANTS)**

4 90. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein,
5 the allegations contained in all preceding paragraphs.

6 91. On June 11, 2024, Plaintiff filed a notice with the Labor Workforce and Development
7 Agency (“LWDA”) at their website pursuant to the Private Attorney General Act, California Labor
8 Code §§ 2698, et seq. (“PAGA”) regarding Defendants. This notice was also sent to Defendants that
9 same day via certified mail.

10 92. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code
11 sections enumerated in Labor Code section 2699.5.

12 93. PAGA provides as follows: “[n]otwithstanding any other provision of law, a Plaintiff
13 may as a matter of right amend an existing complaint to add a cause of action arising under this part at
14 any time within 60 days of the time periods specified in this part.”

15 94. Defendants’ conduct, as alleged herein, violates numerous sections of the California
16 Labor Code including, but not limited to, the following:

- 17 a. Defendants violated Labor Code §§ 226.7, 512, 516, 558 and 1198 by failing to
18 provide all legally required meal and rest period premiums to Plaintiff and other
19 similarly aggrieved employees;
- 20 b. Defendants violated Labor Code §§ 510, 558, 1194, 1194.2, 1197, and 1198 by
21 failing to pay all worked overtime hours to Plaintiff and other similarly
22 aggrieved employees;
- 23 c. Defendants violated Industrial Welfare Commission Order No. 9 and Labor
24 Code §§ 200, 226, 226.7, 500, 510, 1197, 1194, and 1198 by failing to pay
25 Plaintiff and similarly aggrieved employees for all hours worked;
- 26 d. Defendants violated Labor Code § 226 by failing to provide Plaintiff and other
27 similarly aggrieved employees with accurate and compliant itemized wage
28 statements; and

1 e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final
2 wages due.

3 95. California Labor Code section 1174 provides that “[e]very person employing labor in
4 this state shall ... [k]eep a record showing the names and addresses of all employees employed and the
5 ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at
6 which employees are employed, payroll records showing the hours worked daily by and the wages paid
7 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
8 employed at the respective plants or establishments...”

9 96. California Labor Code section 210 provides: “In addition to, and entirely independent
10 and apart from, any other penalty provided in this article, every person who fails to pay the wages of
11 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall
12 be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
13 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
14 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
15 amount unlawfully withheld.”

16 97. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf
17 of an employer who violates, or causes to be violated, a section of this chapter or any provision
18 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
19 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in addition to an amount sufficient
21 to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be
24 paid to the affected employee.” Labor Code section 558(c) provides “[t]he civil penalties provided for
25 in this section are in addition to any other civil or criminal penalty provided by law.”

26 98. Defendants, at all times relevant to this complaint, were employers or persons acting on
27 behalf of an employer(s) who violated Plaintiff’s rights by violating various sections of the California
28 Labor Code as set forth above.

99. As set forth above, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable order of the IWC. Accordingly, Plaintiff seek the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees.

100. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the State of California against Defendant, in addition to other remedies, for violations of California Labor Code sections 200, 201, 202, 203, 204, 210, 221, 224, 226(a), 510, 1174, 1194, 1197, 1197.1, and 1198.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For nominal damages;
2. For compensatory damages;
3. For equitable relief in the nature of declaratory relief, restitution of all monies due to Plaintiff, and disgorgement of profits from the unlawful business practices of Defendants, and accounting;
4. For penalties permitted by Labor Code §§ 200, 201, 202, 203, 210, 226, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and all other applicable sections;
5. For civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided;
6. For interest accrued to date;

1 7. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 226, 1194,
2 and 2698;

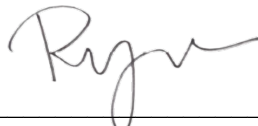
3 8. For reasonable attorneys' fees pursuant to Labor Code §§ 218.6, 226, 226.7, 1194, and
4 2698; and

5 9. For all such other and further relief that the Court may deem just and proper.

6
7 DATED: August 15, 2024

LOYR, APC

8
9
10 By: _____

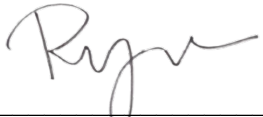

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Attorneys for Plaintiff
BRIAN FLORES LOPEZ

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for themselves on all claims so triable.

DATED: August 15, 2024

LOYR, APC

By: 

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Zachariah E. Moura, Esq.
Kee Seok Mah, Esq.
Harley M. Phleger, Esq.
Attorneys for Plaintiff
BRIAN FLORES LOPEZ