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Attorneys for Plaintiff JOSE A. CONTRERAS HUITRON,  
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

JOSE A. CONTRERAS HUITRON, an  
individual, on behalf of himself and others  
similarly situated,

Plaintiff,

vs.

SERVICE BY MEDALLION, a California  
stock corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 24CV441594

**CLASS ACTION**

Assigned for All Purposes To:

Hon. Rosen, Amber

Dept.: 16

**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 Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA Labor Code § 2698

**DEMAND FOR JURY TRIAL**

Original Complaint: June 20, 2024

Trial Date: None Set

1 Plaintiff JOSE A. CONTRERAS HUITRON (hereinafter “Plaintiff”), on behalf of himself  
2 and other similarly situated non-exempt, hourly employees employed by Defendants within the  
3 state of California during the relevant time period (collectively, “Employees”; individually,  
4 “Employee”), complains of Defendants, and each of them, as follows:

### 5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and all current and former  
7 Employees within the State of California who, at any time from four years prior to the filing of  
8 this lawsuit, are or were employed as non-exempt, hourly employees, including those employed as  
9 janitors, technicians, utility workers, and in similar and in similar and related positions, by  
10 Defendants SERVICE BY MEDALLION, a California stock corporation and DOES 1 through 50,  
11 inclusive (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges  
12 that Defendants, and each of them, violated various provisions of the California Labor Code,  
13 relevant orders of the Industrial Welfare Commission (“IWC”), and the California Business &  
14 Professions Code, and seeks redress for these violations.

15 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for  
16 Defendants in positions generally pertaining to providing janitorial and building maintenance  
17 services to Defendants’ customers. Plaintiff, and upon information and belief the other similarly  
18 situated Employees in the Class, were required to perform work tasks based out of Defendants’  
19 offices, facilities, and customer-designated locations in California. Plaintiff was employed by  
20 Defendants as a janitor, and Defendants tasked him with duties that included cleaning assigned  
21 areas, dusting, vacuuming, emptying wastebaskets, and mopping floors at various locations.

22 3. Defendants employed other similarly situated Employees in similar and related  
23 positions based out of Defendants’ offices, facilities, and customer-designated locations  
24 throughout California and in the Bay area. Plaintiff and the other similarly situated Class Members  
25 worked at Defendants’ behest without being paid all wages due and without being provided all  
26 required breaks. More specifically, Plaintiff and the other similarly situated Class Members were  
27 employed by Defendants and shared similar job duties and responsibilities, were subjected to the  
28 same policies and practices, and endured similar violations at Defendants’ hands.

1           4. Defendants required Plaintiff and the Employees in the Class to work off the clock  
2 and failed to accurately record the hours they were on the clock, failed to pay them at the  
3 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or  
4 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage  
5 statements that prevented them from learning of these unlawful pay practices. Defendants also  
6 failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were  
7 required to remain under Defendants' control and were not provided with the opportunity to take  
8 full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and  
9 the applicable paragraphs of the IWC Wage Orders.

10           5. Defendant SERVICE BY MEDALLION is a California stock corporation that lists  
11 its principal address in Mountain View, California with the California Secretary of State. It lists a  
12 registered corporate agent with addresses in Mountain View, California, and in Santa Clara  
13 County. Service by Medallion lists its type of business as "Building Maintenance Service  
14 (Janitorial)." The wage statements issued to Plaintiff list "SERVICE BY MEDALLION INC" as  
15 his employer with an address in Mountain View, California.

16           6. This Court has jurisdiction over this Action pursuant to California Code of Civil  
17 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
18 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
19 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
20 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
21 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Santa Clara County  
22 and Defendants list a principal office and California office in Santa Clara County. Defendants also  
23 employ Class Members at offices, facilities, and customer-designated locations in Santa Clara  
24 County and throughout California.

25           7. The true names and capacities, whether individual, corporate, associate, or  
26 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently  
27 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of  
28 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants

1 designated herein as Does 1 through 50, inclusive, and each of them, is legally responsible in some  
2 manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this  
3 Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1  
4 through 50 when their identities become known.

5 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in  
6 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried  
7 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of  
8 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in  
9 all respects as the employers or joint employers of Employees. Defendants, and each of them,  
10 exercised control over the wages, hours, or working conditions of Employees, created and  
11 implemented the policies and practices that governed the employment of Plaintiff and the Class  
12 Members and dictated their job duties and responsibilities, or otherwise suffered or permitted  
13 Plaintiff and the other Employee Class Members to work, or engaged them, thereby creating a  
14 common law employment relationship with the Employee Class Members. Therefore, Defendants,  
15 and each of them, employed or jointly employed the Employee Class Members.

#### 16 **FACTUAL BACKGROUND**

17 9. The Employees who comprise the Class, including Plaintiff, are non-exempt  
18 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission  
19 (“IWC”). During the period of four years prior to the filing of this action through its resolution,  
20 the Employee Class Members were employed by Defendants and worked in non-exempt  
21 positions at the direction of Defendants in the State of California. Plaintiff and the Class  
22 Members were either not paid by Defendants for all hours worked or were not paid at the  
23 appropriate minimum, regular, and overtime rates. Plaintiff also contends that Defendants failed  
24 to pay Plaintiff and the Class Members all wages due and owing, including compensation for off-  
25 the-clock work, uncompliant meal and rest breaks, and Defendants’ failure to furnish accurate  
26 wage statements, all in violation of various provisions of the California Labor Code and  
27 applicable paragraphs of the IWC Wage Orders.

1           10.     During the course of Plaintiff and the Class Members' employment with  
2 Defendants, they were not paid all wages they were owed, including for all work performed  
3 (resulting in "off the clock" work) and for all their overtime hours worked, and they were not  
4 paid at the required rates for overtime. This has resulted in systematic and ongoing violations of  
5 the California Labor Code and relevant IWC Wage Orders. Upon information and belief,  
6 Defendants employ other non-exempt, hourly employees as janitors, technicians, utility workers  
7 and in similar and related positions based out of their offices, facilities, and customer-designated  
8 locations in California.

9           11.     Plaintiff was generally scheduled to work six days per week for eight to nine hours  
10 per shift, with shift times generally spanning from 10:00 p.m. through 6:00 a.m. On many  
11 occasions, Plaintiff was also required to work longer shifts with an additional hour or two of time  
12 approved by Defendants to be paid at overtime premium rates. However, Plaintiff was required  
13 by Defendants to endure substantial off-the-clock work before and after his scheduled shift hours.

14           12.     Defendants' policy and practice of requiring systematic off-the-clock work flowed  
15 in part from their unlawful timekeeping procedures. While Defendants required records for shift  
16 start and end times and meal period beginning and end times, they were not recorded  
17 contemporaneously. Instead, Defendants required them to reflect Plaintiff's scheduled hours  
18 rather than his actual hours worked. Plaintiff was therefore compelled to record scheduled shift  
19 times worked rather than actual times when he was on and off the clock, and was concerned  
20 about the consequences if he were to record all the hours he actually worked.

21           13.     In order to avoid overtime, Defendants' supervisors would require Plaintiff to  
22 record his scheduled hours rather than his actual hours worked and would require Plaintiff to  
23 work through meal periods, rest breaks, and after-scheduled work hours, but as addressed above,  
24 Defendants' timekeeping procedures failed to capture this off-the-clock work and their payroll  
25 accordingly failed to compensate it as hours worked.

26           14.     Defendants' supervisors also contacted Plaintiff by calling his personal cell phone  
27 regarding work-related matters and scheduling and would do so both throughout the work day  
28 and during breaks. Plaintiff was also required to work off the clock after his scheduled shift end

1 times, and he also was compelled by Defendants not to record that he was clocked out but to  
2 continue working. Plaintiff recalls several instances where he was required to continue working  
3 off the clock to finish pressing work tasks and requirements he was unable to complete during the  
4 scheduled hours.

5 15. Additionally, Defendants instructed Plaintiff and the Class Members to input into  
6 the timekeeping system that they took thirty minutes for a meal period and did so before the fifth  
7 hour of work as required under the Labor Code and Wage Orders. When Plaintiff attempted to  
8 take a meal period, his meal periods were generally interrupted or cut short as Defendants  
9 required him to prioritize the completion of assigned tasks for the shift. In spite of this,  
10 Defendants required that Plaintiff clock out to allow time records to reflect that he took a legally  
11 compliant meal period, and if Plaintiff failed to do so, Plaintiff would face discipline. Defendants  
12 instructed Plaintiff and the Class Members to thus record compliant meal breaks without regard  
13 to whether they were actually taken on time or for the full duration or were interrupted by  
14 management demands and other work requirements. Additionally, by deducting 30 minutes for a  
15 meal period that was generally not lawfully provided if at all, Defendants effectively and  
16 unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts.  
17 Supervisors would again require that meal period records reflect compliance with the California  
18 Labor Code to avoid incurring and paying meal period premium penalty wages.

19 16. Overtime hours were generally not allowed. However, Defendants' supervisors  
20 regularly required Plaintiff to work through meal periods, rest breaks, and after-scheduled work  
21 hours to meet the job demands, yet as addressed above, Defendants' timekeeping procedures  
22 failed to capture this off-the-clock work. When combined with difficult-to-attain production  
23 goals, understaffing, and over-assignment of tasks for the janitors, this compelled Plaintiff to  
24 work many hours off the clock and without compensation. Additionally, to whatever extent  
25 Defendants paid performance-based bonuses and any other form of remuneration to Employees in  
26 the Class, such as shift differentials and the like, Defendants failed to include it in the regular rate  
27 used to calculate and pay the overtime that Defendants did pay.

1           17. Plaintiff was therefore not paid for his hours worked at the required minimum,  
2 overtime, and double time wage rates due to Defendants' uniformly applied and unlawful policy  
3 and practice of requiring working off the clock and without pay. Defendants systematically  
4 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates  
5 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a  
6 day at the required double time rate. Upon information and belief, the Class Members were bound  
7 by similar scheduling and timekeeping policies and endured similar violations at Defendants'  
8 hands as Plaintiff.

9           18. Defendants have either failed to maintain timekeeping records for Plaintiff that  
10 would permit Plaintiff to discover the nature and extent of the off-the-clock work Defendants  
11 required and the actual hours Plaintiff worked or the breaks he received. By failing to pay for all  
12 hours worked, and by under-recording regular hours to the detriment of the Class Members,  
13 Defendants have committed knowing and intentional ongoing violations of the record-keeping  
14 requirements under the Labor Code, including section 1174, by either failing to maintain records  
15 or retaining inaccurate ones.

16           19. The failure to pay for all hours worked and underpayment of wages to Plaintiff  
17 and the Class Members is and has been a direct consequence of Defendants' unlawful  
18 compensation policies and practices, which upon information and belief applied uniformly to the  
19 Class Members working based out of Defendants' offices, facilities, and customer-designated  
20 locations throughout California. As a result of the above-described unlawful requirements to  
21 work off the clock, the failure to accurately record all hours worked and pay wages at the correct  
22 rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class  
23 Members were not properly paid all wages earned and all wages owed to them by Defendants,  
24 including when working more than eight hours in any given day and/or more than forty hours in  
25 any given week.

26           20. Therefore, from at least four years prior to the filing of this lawsuit and continuing  
27 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all  
28 hours worked and failing to pay minimum wages for all time worked, as required by California

1 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,  
2 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation  
3 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a  
4 week and double-time rates for all hours worked in excess of twelve hours a day, in violation of  
5 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

6 21. Defendants also failed to provide Plaintiff and the Class Members with their  
7 required meal periods and the at least two ten-minute rest breaks as required at a minimum for  
8 Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to  
9 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class  
10 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).  
11 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to  
12 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the  
13 IWC Wage Order(s).

14 22. More specifically, Plaintiff worked shifts that entitled him to at least one meal  
15 period, but as addressed above, Defendants' supervisors required Plaintiff and the Class Members  
16 to for lunches and would deduct that time from hours worked for the shift. To whatever extent  
17 there was ever a schedule for meal periods, it went by the wayside quickly due to the heavy  
18 workload per shift. This led to systematically late meal periods, if they were provided at all, and  
19 on-duty meal periods that were incessantly interrupted management demands and required job  
20 duties and tasks to be performed and required Employees to remain under Defendants' control  
21 during breaks. The difficult to attain production goals and management expectations also  
22 contributed to Employees working through meal periods or not taking them or taking them late so  
23 work could be accomplished or they were required to remain under Defendants' control during  
24 meal periods. Plaintiff recalls informing his supervisor about the heavy workload on several  
25 occasions, however, Defendants failed to remedy the over assignment of tasks and instead  
26 required Plaintiff to work hours without compensation.

27 23. Additionally, Defendants instructed Plaintiff and the Class Members to input into  
28 the timekeeping system that they took thirty minutes for a meal period and did so before the fifth

1 hour of work as required under the Labor Code and Wage Orders. Defendants instructed Plaintiff  
2 and the Class Members to thus record compliant meal breaks without regard to whether they were  
3 actually taken on time or for the full duration or were interrupted by management demands and  
4 other work requirements. Plaintiff recalls that he often had to perform about 20-25 minutes of  
5 work during his meal periods, and despite this fact, Defendants automatically deducted meal  
6 period on each work shift without regard to whether it was actually taken or was otherwise  
7 unlawful. Moreover, such off-the-clock work was required by his supervisors in order to keep up  
8 with the workload and avoid discipline and the possibility of termination.

9         24. Therefore, meal period violations systematically occurred ongoing throughout all  
10 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty  
11 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.  
12 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all  
13 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour  
14 premium payment. Upon information and belief, the other Class Members were subjected to  
15 similar unlawful policies and practices and endured similar violations as Plaintiff.

16         25. Defendants thus failed to provide all the legally required unpaid, off-duty meal  
17 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class  
18 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class  
19 Members were required to perform work as ordered by Defendants for more than five hours  
20 during a shift without receiving compliant meal periods. Additionally, as addressed above,  
21 Defendants followed a practice of requiring off-the-clock work in a manner that would impact  
22 when Employees were to receive meal periods and rest breaks and required them to respond to  
23 work calls and inquiries and other demands during breaks, thus leading to further violations.

24         26. Upon information and belief, Defendants' systems did not automatically generate a  
25 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours  
26 into a work shift or in the event the time punch records reflected a meal period of less than thirty  
27 minutes. However, upon information and belief, in the event Defendants did pay any meal period  
28 premiums, they did so at the employee's customary regular rate of hourly compensation without

1 including all forms of remuneration in that hourly rate calculation, for example by omitting  
2 performance-based bonuses and the like from the rate at which meal premiums were paid.

3 27. Defendants thus followed uniformly applied policies of not providing all required  
4 meal periods to their Employees. Meal periods were often not properly provided, as work  
5 demands impermissibly shortened their breaks. When Plaintiff and the Class Members were able  
6 to take a meal period, it was generally interrupted by work duties or was taken after the fifth hour  
7 of work. Additionally, as addressed above, Defendants followed a practice of requiring off-the-  
8 clock work in a manner that would impact when Employees were to receive meal periods and rest  
9 breaks, thus leading to further violations.

10 28. As a result, Defendants' failure to provide Plaintiff and the Class Members with all  
11 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest  
12 periods is and will be evidenced by Defendants' business records, or lack thereof. As further  
13 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at  
14 each Employee's effective regular hourly rate of compensation for each meal period or rest break  
15 that Defendants failed to provide or deficiently provided.

16 29. Therefore, for at least four years prior to the filing of this action and through to the  
17 present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise  
18 not provided with the opportunity to take required breaks as required under the Labor Code and  
19 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the  
20 Class Members were provided with a meal period, it was often untimely or interrupted, or was  
21 impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.  
22 Meal period violations thus occurred in one or more of the following manners:

- 23 (a) Class Members were not provided full thirty-minute duty free meal periods  
24 for work days in excess of five hours and were not compensated one hour's  
25 wages in lieu thereof, or were not compensated at the correct regular rate  
26 of compensation, all in violation of, among others, Labor Code §§ 226.7,  
27 512, and the applicable Industrial Welfare Commission Wage Order(s);  
28

- 1 (b) Class Members were not provided second full thirty-minute duty free meal  
2 periods for work days in excess of ten hours;
- 3 (c) Class Members were required to work through at least part of their daily  
4 meal period(s);
- 5 (d) Meal periods were provided after five hours of continuous work during a  
6 shift; and
- 7 (e) Class Members were restricted in their ability to take a thirty-minute meal  
8 period or were otherwise required to remain under Defendants' control.

9 30. Similar violations resulted from Defendants' failure to authorize and permit  
10 Plaintiff and the Class Members to take duty-free, net ten-minute rest breaks for every four hours  
11 of shift work, or a major fraction thereof. Plaintiff and the other similarly situated Class Members  
12 were either not authorized permitted the opportunity to take a rest break, or were required to  
13 remain under Defendants' control and respond to calls and instructions from management and job  
14 demands if and when they even attempted to take one. Upon information and belief, Defendants  
15 thus also failed to authorize and permit employees to leave the premises during rest breaks,  
16 evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members to  
17 remain under their control during required off-duty rest break times.

18 31. Rest breaks were neither scheduled nor contemplated by Defendants. During  
19 Plaintiff's entire employment duration with Defendants, he cannot recall a time when he took a  
20 break, despite being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten-  
21 minute rest breaks during each of his work shifts. As detailed above, in addition to failing to  
22 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal  
23 periods that were rarely provided or otherwise received without violation.

24 32. Defendants' uniformly applied policies and practices thus resulted in untimely and  
25 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class  
26 Members worked shifts of at least eight hours, which required at least two rest breaks, and often  
27 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions  
28 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not

1 permitted to take a second or a third break, and those that were provided were often late and  
2 generally interrupted by job duties and requirements.

3       33. During rest periods, employers must relieve employees of all duties and relinquish  
4 control over how employees spend their time. Plaintiff and the Class Members were and are  
5 under Defendants' control when they are working through rest breaks and remaining under  
6 Defendants' control. Defendants have also provided either impermissibly shortened or untimely  
7 meal and rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees in the Class  
8 were thus not authorized and permitted to take lawful rest periods, were systematically required  
9 by Defendants to work through or during breaks, and were not provided with one hour's wages in  
10 lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus  
11 making them either untimely or shortened and on-duty, and they were also prevented from  
12 leaving the premises and otherwise remain under Defendants' control during rest breaks under  
13 Defendants' uniformly applied policies and practices. Rest period violations therefore arose in  
14 one or more of the following manners:

- 15               (a) Class Members were required to work without being provided a minimum  
16               ten minute rest period for every four hours or a major fraction thereof  
17               worked and were not compensated one hour of pay at their regular rate of  
18               compensation for each workday that a rest period was not provided;
- 19               (b) Class Members were not authorized and permitted to take timely rest periods  
20               for every four hours worked, or a major fraction thereof; and
- 21               (c) Class Members were required to remain on duty during and under  
22               Defendants' control rest periods or otherwise had their rest periods  
23               interrupted by work demands.

24       34. From at least four years prior to the filing of this lawsuit and continuing to the  
25 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or  
26 deducting the Employees' earned wages, including by the above-described off-the-clock work and  
27 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest  
28 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely

1 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period  
2 that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted  
3 at least 30 minutes of hours worked from each Employee's daily work shifts. In order to avoid  
4 overtime, Defendants' supervisors would require Plaintiff to record his scheduled hours rather  
5 than his actual hours worked and would require Plaintiff to work through meal periods, rest  
6 breaks, and after-scheduled work hours, but as addressed above, Defendants' timekeeping  
7 procedures failed to capture this off-the-clock work. By not compensating Employees for all hours  
8 worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

9       35. Defendants also violated California Labor Code § 246 by not providing all  
10 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an  
11 Employee who "works in California for the same employer for 30 or more days within a year  
12 from the commencement of employment is entitled to paid sick days as specified in this section."  
13 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their  
14 required and earned sick days, in violation of Labor Code § 246. Additionally and upon  
15 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to  
16 the Class Members during the relevant time period, including by failing to provide two work  
17 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and  
18 248.2 and including damages and penalties as these sections are enforced through Labor Code §  
19 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid  
20 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),  
21 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars  
22 (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief  
23 available for Defendants' failure to provide Employees with all their required and earned sick  
24 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,  
25 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,  
26 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees  
27 and costs pursuant to Labor Code § 2699(g)(1).

1           36.     Upon information and belief, Defendants also failed to provide Employees such as  
2 Plaintiff at the time of his employment and thereafter with written notice complying with all the  
3 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer  
4 shall provide to each employee a written notice, in the language the employer normally uses to  
5 communicate employment-related information to the employee, containing” specifically required  
6 information. Upon information and belief, Defendants failed to provide this information to the  
7 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to  
8 provide Plaintiff and the aggrieved employee Class Members certain specific information upon  
9 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with  
10 any such information when he was hired, or have failed to produce them, and upon information  
11 and belief Defendants committed similar violations in connection with similarly situated and  
12 aggrieved Class Members.

13           37.     As a result of these illegal policies and practices, Defendants also engaged in and  
14 enforced the following additional unlawful practices and policies against Plaintiff and the Class  
15 Members he seeks to represent:

- 16           (a)     failing to pay all wages owed to Class Members who either were discharged,  
17                      laid off, or resigned in accordance with the requirements of Labor Code §§  
18                      201, 202, 203;
- 19           (b)     failing to pay all wages owed to the Class Members twice monthly in  
20                      accordance with the requirements of Labor Code § 204;
- 21           (c)     failing to pay Class Members all wages owed, including all meal and rest  
22                      period premium wages, and failing to pay them at the regular rate of  
23                      compensation;
- 24           (d)     failing to maintain accurate records of Class Members’ hours worked and  
25                      earned wages and meal periods in violation of Labor Code §§ 226 and  
26                      1174(d) and section 7 of the applicable IWC Wage Orders; and
- 27           (e)     failing to produce timekeeping records in response to Plaintiff’s timely and  
28                      lawful request to receive them under these authorities.

1           38. Defendants have also consistently failed to provide Class Members with timely,  
2 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,  
3 including by the above-described requirement of off-the-clock work, failure to pay all overtime  
4 and double time wages owed and failure to pay them at the appropriate premium rates, and failure  
5 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by  
6 miscalculating any overtime or meal period or rest break premium wages and by the systematic  
7 and unlawful deductions Defendants took from Employee wages. Defendants have also made it  
8 difficult to account with precision for the unlawfully withheld wages and meal and rest period  
9 compensation owed to Plaintiff and the Class, during the liability period, including because they  
10 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums  
11 and because they did not implement and preserve a record-keeping method as required for non-  
12 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable  
13 California Wage Orders. Upon information and belief, time clock punches were not maintained or  
14 were not accurately maintained for work shifts and meal periods, which were automatically  
15 presumed by Defendants to have been lawfully provided when they were not. Defendants also  
16 failed to accurately record and pay for all regular and overtime hours worked and submitted by  
17 Plaintiff and the Class Members, including by failing to pay all overtime hours at the correctly  
18 calculated overtime premium rate.

19           39. Defendants have thus also failed to comply with Labor Code § 226(a) by  
20 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class  
21 Members, along with the appropriate applicable rates, among others requirements. Plaintiff and  
22 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee  
23 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the  
24 applicable California IWC Wage Orders by failing to maintain time records showing when the  
25 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor  
26 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from  
27 payment of wages and accurately reporting total hours worked.  
28

1           40. Defendants also required Plaintiff and the Class Members to work hours off the  
2 clock for which they were not compensated. They were required to endure off-the-clock work  
3 addressed above during interrupted or otherwise on-duty meal and rest periods and were not  
4 provided with sick pay and supplemental sick leave and were subjected to systematic off-the-clock  
5 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a  
6 work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,  
7 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to  
8 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-  
9 two hours of their resignation, as required by California wage-and-hour laws, including Labor  
10 Code § 203.

11           41. Additionally, from at least four years prior to the filing of this lawsuit and  
12 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to  
13 incur necessary business expenses in the course of performing their required job duties without  
14 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to  
15 calls from supervisors and co-workers, and electronically tracking when tasks were accomplished  
16 such as taking photos of work progress throughout the day. Moreover, Plaintiff was required to  
17 bring his own equipment and tools in order to complete certain job tasks. Class Members must be  
18 reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants  
19 systematically failed to do so.

20           42. In light of the foregoing, Plaintiff and the Employees in the Class bring this action  
21 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,  
22 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,  
23 1194.2 1197, 1198, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8,  
24 section 11000 *et seq.*

25           43. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff  
26 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits  
27 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or  
28 fraudulent practices alleged in this Complaint.

**CLASS ALLEGATIONS**

44. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often referred to as “the Class” or “Class Members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees by Defendants within the State of California.” This includes all types of janitors, technicians, utility workers, and those in similar and related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

e. Subclass 5. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class Members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class Members who were subject to Defendants’ policy and practice of not timely paying all wages

1 earned when they were due and payable at least twice monthly.

2 h. Subclass 8. Termination Pay Subclass. All Class Members who, within the  
3 applicable limitations period, either voluntarily or involuntarily separated from their employment  
4 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
5 termination.

6 i. Subclass 10. 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  
8 by California wage-and-hour laws.

9 j. Subclass 11. Expense Reimbursement Subclass. All Class Members who incurred  
10 necessary and reasonable expenses in connection with performing their job duties for Defendants  
11 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

12 k. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a  
13 result of Defendants' business acts and practices, to the extent such acts and practices are found to  
14 be unlawful, deceptive, and/or unfair.

15 45. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
16 modify the class description with greater particularity or to provide further division into subclasses  
17 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class  
18 against Defendants, the Class Period should be adjusted accordingly.

19 46. Defendants, as a matter of company policy, practice and procedure, and in violation  
20 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,  
21 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged  
22 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time  
23 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the  
24 benefit of this work, required Employees to perform this work and permitted or suffered to permit  
25 this work. Defendants have uniformly denied these Class Members wages to which these  
26 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in  
27 order to unfairly cheat the competition and unlawfully profit.

1           47.     This action has been brought and may properly be maintained as a class action  
2 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
3 of interest in this litigation and the proposed Class is easily ascertainable from the employment  
4 records for Plaintiff and the Class Members that Defendants are required to maintain under  
5 California law.

6           **A.     Numerosity**

7           48.     The potential members of the class as defined are so numerous that joinder of all  
8 the member of the class is impracticable. While the precise number of Class Member has not been  
9 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
10 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy  
11 the Class definition within the State of California. Plaintiff alleges that Defendants' employment  
12 records will provide information as to the number and location of all Class Members.

13           **B.     Commonality**

14           49.     There are questions of law and fact common to the Class that predominate over any  
15 questions affecting only individual Class Members. The common questions are numerous and  
16 substantial and flow from Defendants' uniform policies and/or practices of violating the California  
17 Labor Code addressed above. As such, these common questions predominate over individual  
18 questions concerning each individual Class Member's showing as to his or her eligibility for  
19 recovery or as to the amount of damages. These common questions of law and fact include:

- 20           a.     Whether Defendants failed to pay Employees minimum wages;
- 21           b.     Whether Defendants failed to pay Employees wages for all hours worked;
- 22           c.     Whether Defendants failed to pay Employees overtime as required under Labor  
23               Code § 510;
- 24           d.     Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
25               IWC Wage Orders, by failing to provide Employees with requisite meal periods or  
26               premium pay in lieu thereof;
- 27           e.     Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
28               Orders, by failing to authorize and permit Employees to take requisite rest breaks

or provide premium pay in lieu thereof;

- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

**C. Typicality**

50. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for

1 the off the clock work and meal and rest violations he was required to endure are typical of those  
2 of the other Class Members.

3 **D. Adequacy of Representation**

4 51. Plaintiff will fairly and adequately represent and protect the interest of the  
5 Employee Class Members. Counsel who represents Plaintiff and the Employees in the Class are  
6 experienced and competent in litigating employment class actions.

7 **E. Superiority of Class Action**

8 52. A class action is superior to other available means for the fair and efficient  
9 adjudication of this controversy. Individual joinder of all Employees is not practicable, and  
10 questions of law and fact common to all Employees predominate over any questions affecting only  
11 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery  
12 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

13 53. As to the issues raised in this case, a class action is superior to all other methods for  
14 the fair and efficient adjudication of this controversy, as joinder of all Class Members is  
15 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class  
16 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may  
17 be relatively small, the expense and burden of individual actions makes it difficult for the Class  
18 Members to individually redress the wrongs they have suffered. Moreover, in the event  
19 disgorgement is ordered, a class action is the only mechanism that will permit the employment of  
20 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in  
21 managing this case as a class action, and proceeding on a class-wide basis will permit Employees  
22 to vindicate their rights for violations they endured which they would otherwise be foreclosed  
23 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

24 54. Class action treatment will allow those persons similarly situated to litigate their  
25 claims in the manner that is most efficient and economical for the parties and the judicial system.  
26 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.  
27 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would  
28 set forth the subject and nature of the instant action. The Defendants' own business records can be

1 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent  
2 that any further notice is required additional media and/or mailings can be used.

3 55. Defendants, as prospective and actual employers of the Employees in the Class,  
4 had a special fiduciary duty to disclose to prospective Class Members the true facts surrounding  
5 Defendants' pay practices, policies and working conditions imposed upon the similarly situated  
6 Employees as well as the effect of any alleged arbitration agreements that may have been forced  
7 upon them. In addition, Defendants knew they possessed special knowledge about pay practices  
8 and policies, most notably intentionally refusing to pay for all hours actually worked which should  
9 have been recorded in Defendants' pay records and the consequence of the alleged arbitration  
10 agreements and policies and practices on the Employees and Class as a whole.

11 56. Plaintiff and the Employees in the Class did not discover the fact that they were  
12 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there  
13 ever any discussion about Plaintiff's and the Class's waiver of their Constitutional rights of trial  
14 by jury, right to collectively organize and oppose unlawful pay practices under California law as  
15 well as obtain injunctive relief preventing such practices from continuing. As a result, the  
16 applicable statutes of limitation were tolled until such time as Plaintiff and the Class Members  
17 discovered their claims.

18 **FIRST CAUSE OF ACTION**  
19 **FAILURE TO PAY MINIMUM WAGES**  
20 **(Against All Defendants)**

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

23 58. Defendants failed to pay Employees minimum wages for all hours worked.  
24 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees  
25 would work hours and not receive wages, including as alleged above in connection with off-the-  
26 clock work, including all the time required to remain on duty and under Defendants' control  
27 during breaks and due to the work demands placed upon them by Defendants' management and  
28 by the unlawful deduction of hours or by paying what should have been overtime hours as

1 regular hours. Defendants' uniformly applied policies required systematic off-the-clock work and  
2 underpayment of all wages owed to Employees over a period of time, while benefiting  
3 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum  
4 wages to Plaintiff and the Class Members, including by requiring systematic off-the-clock work.  
5 To the extent any local wage ordinances were also applicable to paying the employees an hourly  
6 rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances.  
7 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,  
8 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that  
9 denied accurate compensation to Plaintiff and the other members of the Class as to minimum  
10 wage pay.

11         59. In California, employees must be paid at least the applicable state minimum wage  
12 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and  
13 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to  
14 California Labor Code § 204, other applicable laws and regulations, and public policy, an  
15 employer must timely pay its employees for all hours worked. Defendants failed to do so.

16         60. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"  
17 states: "The minimum wage for employees fixed by the commission is the minimum wage to be  
18 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The  
19 applicable minimum wage rate fixed by the commission for work during the relevant period is  
20 found in the Wage Orders.

21         61. The minimum wage provisions of California Labor Code are enforceable by private  
22 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to  
23 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal  
24 overtime compensation applicable to the employee is entitled to recover in a civil action the  
25 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
26 interest thereon, reasonable attorney's fees and costs of suit."

27         62. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
28 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,

1 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
2 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
3 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in  
4 the absence of a contractually agreed upon one.

5         63. In committing these violations of the California Labor Code, Defendants  
6 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not  
7 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual  
8 time worked by Plaintiff and other members of the Class, including by requiring off the clock  
9 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of  
10 all earned wages, and other benefits in violation of the California Labor Code, the Industrial  
11 Welfare Commission requirements and other applicable laws and regulations. As a result of these  
12 violations, Defendants also failed to timely pay all wages earned in accordance with California  
13 Labor Code § 1194.

14         64. California Labor Code § 1194.2 also provides for the following remedies: “In any  
15 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
16 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

18         65. In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
19 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial  
20 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
21 pay each employee minimum wages.

22         66. Pursuant to California Labor Code § 1194.2, Plaintiff and Class Members are  
23 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and  
24 interest thereon.

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

28

68. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages (including double minimum wages) and local wage ordinance wages and 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). Plaintiff and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the Class Members who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Class Members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class Members are entitled to seek and recover statutory costs.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

**(Against All Defendants)**

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

70. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Division of Labor Standards and Enforcement.

71. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the

1 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular  
2 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)  
3 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any  
4 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)  
5 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of  
6 work in a workweek.

7 72. Defendants had a consistent policy of not paying Employees wages for all hours  
8 worked, including by requiring off-the-clock work as addressed above, by unlawful deductions, by  
9 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants  
10 have also failed to include all forms of remuneration in the regular rate of pay used to calculate  
11 and pay overtime and failed to begin paying overtime when it was incurred due to the off-the-  
12 clock work, as detailed above.

13 73. Defendants thus had a consistent policy of not paying Employees wages for all  
14 hours worked, including hours at their required regular, overtime, and double-time rates.  
15 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted  
16 and/or, modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class  
17 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and  
18 the Class Members all earned and owed straight time and overtime wages and other benefits, in  
19 violation of the California Labor Code, the California Code of Regulations and the IWC Wage  
20 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants  
21 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt  
22 employees to work through meal periods or remain under Defendants' control when they were  
23 required to be clocked out or to otherwise work off the clock to complete their daily job duties and  
24 respond to demands from supervisors.

25 74. Therefore, Employees were not properly compensated, nor were they paid overtime  
26 rates for hours worked in excess of eight hours in a given day and/or forty hours in a given week.  
27 Based on information and belief, Defendants did not make available to Employees a reasonable  
28 protocol for correcting time records when Employees worked overtime hours or to fix incorrect

1 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.  
2 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated  
3 Class Members to work through meal periods when they were required to be clocked out or to  
4 otherwise work off the clock to complete their daily job duties.

5 75. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance of  
6 regular wages owed and overtime compensation for all hours worked, as required by California  
7 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable  
8 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the  
9 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

10 76. Additionally, Labor Code § 558(a) provides "any employer or other person acting  
11 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
12 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil  
13 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each  
14 pay period for which the employee was underpaid in addition to an amount sufficient to recover  
15 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each  
16 underpaid employee for each pay period for which the employee was underpaid in addition to an  
17 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall  
18 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in  
19 this section are in addition to any other civil or criminal penalty provided by law." Defendants  
20 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC  
21 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor  
22 Code § 558.

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

78. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission” or if the employer pays “a wage less than the minimum fixed by an order of the commission” or “violates...any provision of this chapter or any order or ruling of the commission.”

79. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation for all their hours worked, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

### THIRD CAUSE OF ACTION

## MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

**(Against All Defendants)**

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

81. Employees regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC Wage Order, an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

82. Defendants failed to provide Employees with meal periods as required under the Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required to work or to otherwise remain under Defendants' control during meal periods, or Defendants

1 provided them after Employees worked beyond the fifth hour of their shifts or Employees  
2 otherwise had them shortened and interrupted by work demands and requirements to perform off  
3 the clock work and remain under Defendants' control.

4 83. Defendants thus failed to provide Plaintiff and the Class Members with meal  
5 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,  
6 including by not providing them with the opportunity to take meal breaks, by providing them late  
7 or for less than thirty minutes, or by requiring them to perform work during breaks.

8 84. Moreover, Defendants failed to compensate Employees for each meal period not  
9 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and  
10 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an  
11 employee a meal period in accordance with this section, the employer shall pay the employee one  
12 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal  
13 period is not provided. As detailed above, on the occasions when Defendants did pay any meal  
14 period premiums, they upon information and belief underpaid them by miscalculating the regular  
15 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to  
16 compensate the Employees in the Class for each meal period not lawfully provided, as required  
17 under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

18 85. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the  
19 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal  
20 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or  
21 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory  
22 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and  
23 other statutes and applicable IWC Wage Order paragraphs.

24 **FOURTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

1           87.     Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
2 provide that employers must authorize and permit all employees to take rest periods at the rate of  
3 ten minutes net rest time per four (4) work hours.

4           88.     Employees consistently worked consecutive four hour shifts and were generally  
5 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and  
6 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable  
7 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for  
8 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest  
9 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort  
10 to schedule or otherwise authorize and permit Plaintiff and the Class Members to take lawful rest  
11 breaks. Employees were often required to work or to otherwise remain under Defendants' control  
12 during rest periods, including by responding to work requirements, and had breaks provided  
13 untimely as a result of the above described off the clock work. Plaintiff and the Class Members  
14 were also not permitted to leave their work premises during rest breaks.

15           89.     Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage  
16 Orders provide that if an employer fails to provide an employee rest period in accordance with this  
17 section, the employer shall pay the employee one hour of pay at the employee's regular rate of  
18 compensation for each workday that the rest period is not provided. Defendants failed to do so.

19           90.     Defendants, and each of them, have therefore intentionally and improperly denied  
20 rest periods to Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and 512 and  
21 paragraph 12 of the applicable IWC Wage Orders.

22           91.     Defendants failed to authorize and permit Plaintiff and the Class Members to take  
23 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees  
24 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed  
25 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs  
26 12 and 20 of the applicable IWC Wage Orders.

27           92.     Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the  
28 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour

1 of wages at their effective hourly rates of pay for each day worked without the required rest  
2 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against  
3 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

4 **FIFTH CAUSE OF ACTION**

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

6 **(Against All Defendants)**

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

9 94. California Labor Code § 226(a) requires an employer to furnish each of his or her  
10 employees with an accurate, itemized statement in writing showing the gross and net earnings,  
11 total hours worked, and the corresponding number of hours worked at each hourly rate; these  
12 statements must be appended to the detachable part of the check, draft, voucher, or whatever else  
13 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these  
14 statements may be given to the employee separately from the payment of wages; in either case the  
15 employer must give the employee these statements twice a month or each time wages are paid.

16 95. Defendants failed to provide Plaintiff and the similarly situated Employee Class  
17 Members with accurate itemized wage statements in writing, as required by the Labor Code and  
18 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to  
19 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,  
20 including for all overtime and double time hours worked and for deficient meal periods and rest  
21 breaks, all of which Defendants knew or reasonably should have known were owed to the  
22 Employees, as alleged above.

23 96. Throughout the liability period, Defendants intentionally failed to furnish to  
24 Plaintiff and the Class Members, upon each payment of wages, itemized statements accurately  
25 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-  
26 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net  
27 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
28 the employee and only the last four digits of his or her social security number or an employee

1 identification number other than a social security number, (8) the name and address of the legal  
2 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and  
3 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor  
4 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory  
5 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class  
6 Members with such timely and accurate wage and hour statements.

7         97. Plaintiff and the Class Members suffered injury as a result of Defendants'  
8 knowing and intentional failure to provide them with the wage and hour statements as required by  
9 law and are presumed to have suffered injury and entitled to penalties under Labor Code §  
10 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide  
11 accurate and complete information as required by any one or more of items Labor Code § 226  
12 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily  
13 determine from the wage statement alone one or more of the following: (i) The amount of the  
14 gross wages or net wages paid to the employee during the pay period or any of the other  
15 information required to be provided on the itemized wage statement pursuant to items (2) to (4),  
16 inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross  
17 wages to determine the net wages paid to the employee during the pay period, (iii) The name and  
18 address of the employer and, (iv) The name of the employee and only the last four digits of his or  
19 her social security number or an employee identification number other than a social security  
20 number. For purposes of Labor Code § 226(e) "promptly and easily determine" means a  
21 reasonable person [i.e. an objective standard] would be able to readily ascertain the information  
22 without reference to other documents or information.

23         98. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers  
24 are required "to pay each employee, on the established payday for the period involved, not less  
25 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor  
26 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order  
27 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members  
28 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph

1 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable  
2 IWC Wage Orders.

3 99. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code  
4 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the  
5 Class suffered injuries, including among other things confusion over whether they received all  
6 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing  
7 them to make mathematical computations to analyze whether the wages paid in fact compensated  
8 them correctly for all hours worked.

9 100. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable  
10 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of  
11 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and  
12 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an  
13 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to  
14 an award of costs and reasonable attorneys' fees.

15 **SIXTH CAUSE OF ACTION**  
16 **VIOLATION OF LABOR CODE § 221**  
17 **(Against All Defendants)**

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

20 102. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or  
21 receive from an employee any part of wages theretofore paid by said employer to said employee."  
22 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and  
23 public policy, an employer must timely pay its employees for all hours worked. Defendants failed  
24 to do so.

25 103. Defendants unlawfully received and/or collected wages from the Employees in the  
26 Class by requiring off-the-clock work, by miscalculating overtime, and by automatically deducting  
27 time for meal periods when they were not lawfully provided and not paying one hour of pay at the  
28 regular rate of compensation for every meal and rest period violation endured by Plaintiff and the

1 other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks,  
2 Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or  
3 otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was  
4 generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least  
5 30 minutes of hours worked from each Employee's daily work shifts. By not compensating  
6 Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of  
7 Labor Code § 221.

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

10 **SEVENTH CAUSE OF ACTION**  
11 **VIOLATION OF LABOR CODE § 204**  
12 **(Against All Defendants)**

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

15 106. Labor Code § 204 instructs that: "All wages, ...earned by any person in any  
16 employment are due and payable twice during each calendar month, on days designated in  
17 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,  
18 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month  
19 during which the labor was performed, and labor performed between the 16th and the last day,  
20 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following  
21 month." Additionally, the requirements of this section shall be deemed satisfied by the payment of  
22 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven  
23 calendar days following the close of the payroll period." As detailed above, Defendants  
24 maintained a consistently applied policy and practice of not paying all wages earned between the  
25 1<sup>st</sup> and 15<sup>th</sup> days of a month between the 16<sup>th</sup> and 26<sup>th</sup> day and failed to pay all wages earned  
26 between the 16<sup>th</sup> and the last day of the month between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.  
27 Defendants similarly failed to pay all wages earned by not more than seven calendar days  
28 following the close of the payroll period.

107. All wages due and owing to Plaintiff and the Class Members, including as required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each employee in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages to which he or she was entitled.

108. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

109. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs, pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the applicable IWC Wage Orders.

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

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

111. Plaintiff and numerous Class Members are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom.

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

1           113. The wages withheld from these Employees by Defendants remained due and owing  
2 for more than thirty days from the date of separation from employment. Additionally, Defendants  
3 failed to timely pay Plaintiff his final check at the time of his termination. Plaintiff was paid about  
4 5 days after he learned about his termination, and Defendants failed to pay him any waiting time  
5 penalty.

6           114. Defendants thus failed to pay Plaintiff and the Class Members without abatement,  
7 all wages as defined by applicable California law. Among other things, these Employees were not  
8 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked  
9 or requiring off-the-clock work or by unlawfully under-recording time entries to the detriment of  
10 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and  
11 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the  
12 required time was willful within the meaning of Labor Code § 203.

13           115. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers  
14 are required "to pay each employee, on the established payday for the period involved, not less  
15 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor  
16 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order  
17 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members  
18 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph  
19 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable  
20 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and  
21 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer  
22 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or  
23 if the employer pays "a wage less than the minimum fixed by an order of the commission" or  
24 "violates...any provision of this chapter or any order or ruling of the commission."

25           116. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former  
26 Employee Class Members to penalties under Labor Code § 203 and the applicable paragraphs of  
27 the IWC Wage Orders as addressed above, including the requirement that an employee's wages  
28 shall continue until paid for up to thirty (30) days from the date they were due.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

3 **(Against All Defendants)**

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

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

10 119. During the course of Plaintiffs and Employees' employment, Defendants  
11 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as  
12 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and  
13 premium pay as discussed above and failing to document and pay for actual hours worked.

14 120. Defendants are also required by the California Labor Code § 1198 and the  
15 applicable Wage Order to maintain a tracking system that accurately records the times during  
16 which Employees work.

17 121. Defendants have maintained a common unlawful policy and practice of failing to  
18 accurately record all hours worked and all meal period start and end times and by adjusting or  
19 otherwise rounding and shaving them down.

20 122. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
21 knew wages to be due but failed to pay them.

22 123. Accordingly, Defendants are liable for civil penalties pursuant to the California  
23 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

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1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

3 **(Against All Defendants)**

4 124. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
5 full herein.

6 125. Plaintiff is informed and believes and based thereon alleges that throughout the  
7 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work-  
8 related expenses they incurred. Defendants required Plaintiff and the Class Members to use their  
9 cellular phones to conduct work-related business and the Class Members must be reimbursed for  
10 these necessary business expenses under Labor Code § 2802 and Defendants failed to do so.

11 126. Defendants thus followed a uniform policy and practice of failing to reimburse  
12 Employees for these necessary work-related expenses or losses incurred in the direct discharge of  
13 their job duties during employment with Defendants and at the direction of the Defendants  
14 pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

15 127. Defendants' knowing and willful failure to reimburse lawful necessary work-  
16 related expenses and losses to Plaintiff and the Class Members resulted in damages because,  
17 among other things, Defendants did not inform employees of their right to be reimbursed for those  
18 work-related expenses. As Defendants failed to inform and misled Plaintiff and the Class  
19 Members with regard to their rights, Plaintiff and the Class Members were led to believe that  
20 incurring those lawful and necessary expenses was an expected and essential function of their  
21 employment with Defendants and that failure to incur those expenses would have adverse  
22 consequences on their employment.

23 128. Therefore, Plaintiff and the Class Members are entitled to reimbursement for any  
24 and all necessary work-related expenses, as provided for in Labor Code § 2802(b) and paragraph 9  
25 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while  
26 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed  
27 from the date Plaintiff and the Class Members incurred those expenses. Further, Plaintiff and the  
28 Class Members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

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

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

130. Plaintiff, on behalf of himself, the Employees in the Class, 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.

131. Plaintiff is a “person” within the meaning of the 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.

132. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices. By the conduct alleged herein, Defendants’ practices were deceptive and fraudulent in that Defendants’ policy and practice failed to provide the required amount of compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class Members for all hours worked, due to systematic business practices as alleged herein that cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

1 comply with minimum labor standards.

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

8 135. Defendants' conduct, as alleged above, constitutes unfair competition in violation  
9 of the Business & Professions Code § 17200 *et seq.*

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

14 137. By the conduct alleged herein, Defendants have engaged and continue to engage in  
15 a business practice which violates California and federal law, including but not limited to, the  
16 applicable Industrial Wage Order(s), the California Code of Regulations, and the California  
17 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this  
18 Court should issue declaratory and other equitable relief pursuant to California Business &  
19 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to  
20 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

1 Defendants have unlawfully failed to pay.

2 **TWELFTH CAUSE OF ACTION**

3 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

4 **(Against All Defendants)**

5 140. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
6 full herein.

7 141. Plaintiff and the Employees in the Class are also aggrieved employees as defined  
8 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and  
9 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time  
10 period.

11 142. In failing to pay Aggrieved Employees minimum wages and overtime, not  
12 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and  
13 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,  
14 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required  
15 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours  
16 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and  
17 paragraph 7 of the applicable IWC Wage Orders.

18 143. As such, Employees seek wages and penalties under Labor Code §§ 2698 and  
19 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,  
20 including the penalty provisions, without limitation, based, inter alia, on the following California  
21 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,  
22 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

23 144. More specifically, after complying with the notice procedures of Labor Code §  
24 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General  
25 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above  
26 addressed underlying claims and seeking penalties as specified by the applicable corresponding  
27 provisions, including as follows:

28 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all

1 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime  
2 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and  
3 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking  
4 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,  
5 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant  
6 to Labor Code § 2699(g)(1);

7 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved  
8 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to  
9 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under  
10 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC  
11 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under  
12 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,  
13 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs  
14 pursuant to Labor Code § 2699(g)(1);

15 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide  
16 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to  
17 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,  
18 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking  
19 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),  
20 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,  
21 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by  
22 providing inaccurate wage statements and failing to maintain records as required under Labor  
23 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor  
24 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a  
25 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial  
26 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent  
27 citation, ...";

28 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at

1 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,  
2 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,  
3 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20  
4 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code  
5 § 2699(g)(1);

6 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For  
7 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the  
8 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and  
9 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties  
10 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and  
11 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs  
12 pursuant to Labor Code § 2699(g)(1);

13 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code  
14 Sections: For any above addressed violation of the applicable provisions of the IWC Wage  
15 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §  
16 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and  
17 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to  
18 Labor Code § 2699(g)(1).

19 145. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also  
20 seeks the penalties and remedies set forth in Labor Code § 558, which states:

21 (a) Any employer or other person acting on behalf of an employer who violates, or  
22 causes to be violated, a section of this chapter or any provision regulating hours and days of work  
23 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)  
24 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for  
25 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.  
26 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for  
27 each pay period for which the employee was underpaid in addition to an amount sufficient to  
28 recover underpaid wages...

1 (b) If upon inspection or investigation the Labor Commissioner determines that a  
2 person had paid or caused to be paid a wage for overtime work in violation of any provision of this  
3 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare  
4 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,  
5 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a  
6 violation of this chapter shall be the same as those set out in Section 1197.1.

7 (c) The civil penalties provided for in this section are in addition to any other civil or  
8 criminal penalty provided by law.

9 146. Plaintiff has exhausted his administrative remedies by submitting a certified letter to  
10 the LWDA and Defendants on June 20, 2024 (LWDA-CM-1035352-24) addressing in detail the  
11 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal  
12 theories to support the alleged violations and requested penalties. The LWDA has not provided  
13 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark  
14 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations  
15 addressed herein and in the PAGA Notice letter and the original Complaint.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiff prays for the following relief:

- 18 1. For an order certifying this action as a class action;
- 19 2. For compensatory damages in the amount of the unpaid minimum wages for work  
20 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
21 the filing of this action, as may be proven;
- 22 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
23 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 24 4. For compensatory damages in the amount of all unpaid wages, including overtime  
25 and double-time pay, as may be proven;
- 26 5. For compensatory damages in the amount of the hourly wage made by Employees  
27 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
28 years prior to the filing of this action, as may be proven;

1           6.       For compensatory damages in the amount of the hourly wage made by Employees  
2 for each day requisite rest breaks were not provided or were deficiently provided where no  
3 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
4 be proven;

5           7.       For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

6           8.       For restitution and/or damages and penalties for Defendants' failure to pay all  
7 wages due twice monthly under Labor Code § 204, as may be proven;

8           9.       For restitution and/or damages for all amounts unlawfully withheld from the wages  
9 for all Class Members in violation of Labor Code § 221, as may be proven;

10          10.      For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
11 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

12          11.      For penalties pursuant to Labor Code § 1174.5, as may be proven;

13          12.      For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

14          13.      For damages and restitution for failure to reimburse all reasonable and necessary  
15 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

16          14.      For restitution for unfair competition pursuant to Business & Professions Code  
17 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

18          15.      For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

19          16.      For penalties under Labor Code § 558, as may be proven;

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

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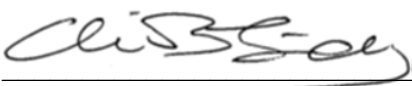
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- 1           18.     For other wages and penalties under the Labor Code as may be proven;  
2           19.     For all general, special, and incidental damages as may be proven;  
3           20.     For an award of pre-judgment and post-judgment interest;  
4           21.     For an award providing for the payment of the costs of this suit;  
5           22.     For an award of attorneys' fees; and  
6           23.     For such other and further relief as this Court may deem proper and just.

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DATED: September 3, 2024

D.LAW, INC.

By:   
David Yeremian  
Alvin B. Lindsay  
Melissa Rodriguez  
Attorneys for Plaintiff JOSE A.  
CONTRERAS HUITRON and all others  
similarly situated

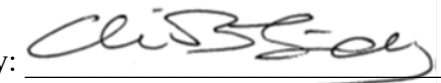
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: September 3, 2024

D.LAW, INC.

By:



David Yeremian  
Alvin B. Lindsay  
Melissa Rodriguez  
Attorneys for Plaintiff JOSE A.  
CONTRERAS HUITRON and all others  
similarly situated

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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.

Malcolm Heinicke  
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350 South Grand Avenue  
Los Angeles, CA 90071

**[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION)** by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

**[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.

Sasha Zambrano