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Writer licensed in:
California
C.D., E.D., N.D., and S.D. California

**RE: STEVEN JOSEPH THOMAS, individually and on behalf of all others similarly situated v.
BOYS & GIRLS CLUB OF SOUTH SAN LUIS OBISPO COUNTY, et al.**

June 18, 2024

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

BOYS & GIRLS CLUB
OF SOUTH SAN LUIS OBISPO COUNTY
c/o Jennifer Flachman
1830 19th Street
Oceano, CA 93445

BOYS & GIRLS CLUBS
OF THE CENTRAL COAST
c/o Maria Fabula
901 N. Railroad Avenue
Santa Maria, CA 93458

UNITED BOYS AND GIRLS CLUBS
OF SANTA BARBARA COUNTY
c/o Michael Baker
1528 Chapala Street, 3rd Floor
Santa Barbara, CA 93101

To Whom It May Concern:

Please take notice that Steven Jose Thomas alleges that Boys & Girls Club of South San Luis Obispo County; Boys & Girls Clubs of the Central Coast; and United Boys And Girls Clubs Of Santa Barbara County (“Defendants”), have violated, and continue to violate, the provisions of the *Labor Code* and wage orders promulgated by the Industrial Welfare Commission. Those similarly situated workers include: all current and former Aggrieved Employees, employed by Defendants, who were denied meal breaks, rest breaks, premiums in lieu of meal and rest breaks, all wages due, and provided services for Defendants, at any of its locations and/or job sites in the State of California, from a date four years prior to the date that the attached proposed complaint is filed, to the present date. Plaintiff includes, and incorporates herein, all of the allegations set forth in the attached and enclosed Complaint for Damages.

The complaint alleges that Defendants' actions are subject to civil penalties pursuant to the following provisions of the *Labor Code* and Industrial Welfare Commission Wage Order 5:

- a. Sections 226 and 558 for failing to provide accurate, itemized wage statements;
- b. Sections 226.7 and 512(a) for failing to provide meal and/or rest breaks, or premium pay in lieu thereof;
- c. Sections 201-203 and 558 for failing to pay all wages owed upon termination;
- d. Section 1199, and Wage Order No. 5, for failing to pay proper wages and/or provide required working conditions and/or for violating the applicable Wage Order/regulations.

Accordingly, Mr. Thomas requests that the Labor and Workforce Development Agency not investigate these violations and permit him to pursue a claim for such penalties under the Private Attorneys General Act (Labor Code section 2698 et seq. and Labor Code section 558). Upon receiving notice that this Agency does not intend to investigate the alleged violations, or, if no notice is provided, then within 60 calendar days of the postmark date of this letter, the named plaintiff will amend his lawsuit to include these claims.

Thank you for your time and consideration.

Yours Truly,

A handwritten signature in dark ink, appearing to read "Todd M. Friedman", followed by a long horizontal line extending to the right.

Todd M. Friedman, Esq.

cc: Labor and Workforce Development Agency (with enclosure)

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
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Attorneys for Plaintiff

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA
UNLIMITED JURISDICTION**

STEVEN JOSEPH THOMAS, individually)
and on behalf of all others similarly situated,)

Plaintiffs,

vs.

BOYS & GIRLS CLUB OF SOUTH SAN)
LUIS OBISPO COUNTY; BOYS & GIRLS)
CLUBS OF THE CENTRAL COAST;)
UNITED BOYS AND GIRLS CLUBS OF)
SANTA BARBARA COUNTY; and DOES)
1 to 50, inclusive,)

Defendant.

CASE NO.:

**FIRST AMENDED CLASS ACTION
COMPLAINT AND JURY DEMAND**

- 1. Failure to Provide Accurate Wage Statements (Labor Code §§ 226);**
- 2. Failure to Pay All Wages Owed Upon Termination (Labor Code §§ 201-203);**
- 3. Failure to Provide Meal Break or Provide Unpaid Meal Period Premium (Labor Code §§ 226.7 and 512(a))**
- 4. Failure to Provide Rest Break or Provide Unpaid Rest Period Premium (Labor Code § 226.7)**
- 5. Violation of California Business and Professions Code §17200;**
- 6. Civil Penalties for California Labor Code Violations, pursuant to Labor Code § 2698, et seq. (PAGA).**

Plaintiff STEVEN JOSEPH THOMAS (hereinafter "Plaintiff"), as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, hereby submits this Complaint for Defendants BOYS & GIRLS CLUB OF SOUTH SAN LUIS OBISPO COUNTY; BOYS & GIRLS CLUBS OF THE CENTRAL COAST; UNITED BOYS AND GIRLS CLUBS OF SANTA BARBARA COUNTY and other as yet unknown entities ("Defendants")

1 for failure to provide rest and meal breaks or pay an unpaid period premium in lieu thereof, failure to
2 provide accurate wages statements, failure to pay all wages due upon termination; and this Class Action
3 Complaint against Defendants on behalf of himself and a class of all other similarly situated current
4 and former employees of Defendants for wages owed, including meal and break period wages, penalties
5 or damages for failure to keep accurate records, other penalties under the California Labor Code, and
6 for restitution and injunctive relief as follows:

7 **INTRODUCTION**

8 1. Plaintiff brings this wage and hour Class Action and PAGA enforcement action against
9 Defendants, and each of them, pursuant to Code of Civil Procedure §382. Plaintiff brings this action
10 on behalf of himself and for the benefit of all other persons employed directly by Defendants, who
11 were not paid wages pursuant to California law prior and subsequent to the date this action was filed,
12 and on behalf of the California Public. All allegations in this wage and hour Class Action Complaint
13 are based upon information and belief, except for those allegations which pertain to the Plaintiff named
14 herein and their counsel. Plaintiff's information and beliefs are based upon, inter alia, the investigation
15 conducted to date by Plaintiff and his counsel. Each allegation in this wage and hour Class Action
16 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable
17 opportunity for further investigation and discovery.

18 2. On information and belief, for at least four years prior to the filing of this action and
19 through to the present, Defendants employed Plaintiff and the putative class members in Santa Barbara
20 County, and other counties in the State of California, and maintained and enforced against Plaintiff and
21 the putative class members the systemic policies, practices, and/or customs complained of herein.
22 Plaintiff seeks relief on behalf of himself, and the members of the Plaintiff Class, as a result of systemic
23 employment policies, practices and procedures, more specifically described below, which violate the
24 California Labor Code, and the orders and standards promulgated by the California Department of
25 Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards Enforcement,
26 and which have resulted in the failure of Defendant to pay Plaintiff and members of the Class and
27 Subclass all wages owed to them. Said employment policies, practices and procedures are generally
28 described as follows:

- a. Defendant failed to pay all wages due and owing to their employees, including Plaintiff and the class members, in violation of California Labor Code (“Labor Code”);
- b. Defendant failed to provide meal breaks, or pay an unpaid meal period premium in lieu thereof, in violation of Labor Code §§ 226.7 and 512(a);
- c. Defendant failed to provide rest breaks, or pay an unpaid rest period premium in lieu thereof, in violation of Labor Code § 226.7;
- b. Defendant failed to pay Plaintiff and members of the proposed class, all wages due upon termination of their employment, in violation of Labor Code §§ 201-203;
- c. Violating Business and Professions Code §§ 17200 et seq. as further set forth below.

3. Plaintiff also alleges that Defendant, and each of them, had the clear ability to pay such wages as are/were due and owing to the Plaintiff and members of the Class, but intentionally did not pay such wages, in conscious disregard of the rights of Plaintiff and the members of the Class to timely payment of their wages.

4. This action seeks relief for the un-remediated violations of California law including, inter alia:

- a. Damages and/or restitution, as appropriate, to Plaintiff and to the Class Members, for non-payment of the wages due them and interest thereon;
- b. Damages and/or penalties for Plaintiff and Class Members who voluntarily quit, or were laid off and/or terminated, but who were not paid all wages due and owing in conformity with California law;
- c. Penalties and wages pursuant to Labor Code §§ 2698 et seq. and 558;
- d. Implementation of other equitable and injunctive relief, including, inter alia, an injunction prohibiting Defendant, and each of them, from continuing to:
 - i. fail to pay all wages due in accordance with the Labor Code;
 - ii. fail to issue accurate itemized wage statements in accordance with the Labor Code; and,
 - iii. fail to pay all compensation due to their non-exempt employees at the time of the termination of their employment in accordance with the Labor Code; and,

1 e. Attorney fees and costs as provided by statute and/or applicable case law including,
2 without limitation, Labor Code §§ 226, 1194 and 2698 et seq., and such other relief as
3 the Court deems just and proper.

4 5. The claims herein are brought by Plaintiff on his own behalf and on behalf of the Class
5 which is defined as individuals who are currently or have been employed in California by Defendant
6 as non-exempt employees during the Class Period (which commences four years prior to the filing of
7 this action and continues until judgment is rendered herein), and whose working conditions are not
8 controlled by a collective bargaining agreement.

9 6. “Class Period” shall mean the period from four years prior to the date the filing of the
10 Complaint, through and including the date judgment is rendered in this matter. Plaintiff herein reserves
11 the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

12 7. The actions of Defendant are in violation of the Labor Code as well as IWC wage orders
13 and, as a result, are unlawful and unfair acts, thus constituting a violation of California Business &
14 Professions Code section 17200, *et seq.* (Unfair Competition Law, “UCL”).

15 8. The policies, practices and customs of Defendant described above and herein have
16 resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that
17 routinely adhere to the strictures and requirements of the Labor Code and of the UCL.

18 **JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over Plaintiff and Class members’ claims for unpaid wages,
20 denied meal and rest breaks, failure to provide itemized wage statements, and failure to pay all earned
21 wages upon termination pursuant to the Labor Code, including, but not limited to, sections 200, 201,
22 202, 203, 226, 226.7, 512, 558, and the IWC wage orders.

23 10. This Court has jurisdiction over Plaintiff and Class members’ claims for injunctive
24 relief, including restitution of earned wages, which are the money and property of Plaintiff and Class
25 members, arising from Defendant’ unfair competition under UCL sections 17203 and 17204.

26 11. This Court also has jurisdiction over Plaintiff and Class members’ claims for penalties
27 in violation of the Labor Code pursuant to UCL section 17202, as well as pursuant to the applicable
28 Labor Code provisions.

1 12. Venue as to all Defendants is proper in this County pursuant to Code of Civil Procedure
2 section 395(a). Plaintiff is informed and believes, and thereon alleges that Defendant conducts
3 business, employs Class members, and has locations in this County, and the events complained of
4 occurred in this County.

5 13. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
6 Defendant during the applicable statutory period and suffered one or more of the Labor Code violations
7 set forth herein. Accordingly, Plaintiff seeks to recover civil penalties under the Labor Code Private
8 Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus reasonable
9 attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former employees of
10 Defendants during the Civil Penalty Period.

11 14. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
12 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
13 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
14 PAGA allegations described herein is not required.

15 15. During the period beginning one (1) year preceding the provision of notice to the
16 LWDA, Defendants violated the *Labor Code* as fully outlined below.

17 16. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such
18 as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the
19 statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified
20 in Labor Code section 2699.3.

21 17. California Labor Code §§ 2698, *et seq.*, the “Labor Code Private Attorneys Generals
22 Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private Attorneys General their
23 current or former employers for various civil penalties for violating the California Labor Code.

24 18. On or around June 18, 2024, Plaintiff provided written notice pursuant to Labor Code
25 section 2699.3 online and by certified mail, with return receipt requested, of Defendant’s violation of
26 various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by
27 certified mail, with return receipt requested to Defendants, and each of them. On or around February
28 2, 2024, Plaintiff provided amended written notice pursuant to Labor Code section 2699.3 online and

1 by certified mail with return receipt requested, to the LWDA and Defendants as to the violations of the
2 Labor Code in this lawsuit.

3 **THE PARTIES**

4 19. Plaintiff STEVEN JOSEPH THOMAS was employed by Defendants as a non-exempt
5 employee during the Class Period, including within the last year. Plaintiff worked at all times
6 mentioned herein in the County of Santa Barbara. Plaintiff is a member of the Class and Subclass.

7 20. Plaintiff is informed and believes and thereon alleges that at all times relevant to this litigation,
8 Defendants BOYS & GIRLS CLUB OF SOUTH SAN LUIS OBISPO COUNTY; BOYS & GIRLS
9 CLUBS OF THE CENTRAL COAST; UNITED BOYS AND GIRLS CLUBS OF SANTA
10 BARBARA COUNTY (“Defendants”), were and/or are corporations, organized and existing pursuant
11 to the laws of the state of California, which conducted and/or conduct its business in the State of
12 California. Defendants were at all relevant times doing business throughout the State of California,
13 have various offices and locations in the State, and serve numerous customers throughout the State.

14 21. Defendants are each a “person” as defined in Labor Code section 18 and UCL section
15 17201. Defendants are also an “employer” as that term is used in the Labor Code and the IWC wage
16 orders.

17 22. The identities of Defendant designated as DOES 1-50 are currently not known.
18 However, Plaintiff is informed, and believes, and thereon alleges that each of the named and fictitiously
19 named Defendant is an “employer” of Plaintiff and the Class by legal recognition under such principles
20 as “joint enterprise”, “alter ego”, “co-employer” or some other legally recognized principle. Each of
21 the Defendant, whether specifically named and fictitiously names, exercises sufficient control over the
22 terms of employment to be legally recognized as an “employer” of Plaintiff and the Class for purposes
23 of California’s wage and hour laws and regulations.

24 23. The members of the Class, including the named, representative Plaintiff, have been
25 employed by Defendant during the Class Period in California. The practices and policies which are
26 complained of by way of this Complaint are enforced by Defendant throughout the State of California.

24. Defendant directly, and indirectly, hired Plaintiff in San Bernardino. During all times relevant to this litigation, Plaintiff performed work at various times during the Class Period at agreed upon hourly rates that varied over his period of employment.

FACTUAL ALLEGATIONS

25. Defendants' policies, procedures and practices deny Plaintiff and members of the putative class the right to meal and rest breaks, as prescribed under California Law. Rather, Defendants maintained control over the activities and actions of members of the Class during mandated meal and rest breaks, as evidenced by payroll and timekeeping records.

26. Plaintiff is informed and believes and therein alleges that Defendants maintained policies, procedures, or practices where Plaintiff and members of the putative class could not take meal and rest breaks during active work hours.

27. At all relevant times, Defendants BOYS & GIRLS CLUB OF SOUTH SAN LUIS OBISPO COUNTY, BOYS & GIRLS CLUBS OF THE CENTRAL COAST, and UNITED BOYS AND GIRLS CLUBS OF SANTA BARBARA COUNTY owned and/or operated, as joint employer, child care and education centers operating under the name “BOYS & GIRLS CLUB”.

28. Defendants' policies, procedures and practices deny Plaintiff and members of the putative class all wages earned, specifically rest and meal premiums for missed rest and meal periods, as prescribed under California Law. Rather, Defendants failed to accurately pay the correct premium amount for missed rest and meal periods by failing to accurately incorporate the correct regular rate of pay in determining the correct premium amount owed. In other instances, Defendants did not pay rest and meal premiums for instances where a compliant rest and meal break was not provided.

29. Plaintiff worked for Defendants from 2018 until 2023. From 2018 to 2020, Plaintiff worked at Defendants' location in Oceano, CA. From 2020 to 2022, Plaintiff worked in the Boys and Girls Club location in Santa Maria, CA. Lastly, Plaintiff worked from 2022 through August 2023 in the Santa Barbara, CA Boys and Girls Club location.

30. At all relevant times, Plaintiff worked shifts of at least 5 hours. However, Defendants denied Plaintiff and similarly situated employees with a 10-minute rest break during the shift. Defendants required Plaintiff and similarly situated employees to care for and supervise children

1 receiving education and services from the organization during their shifts. Defendants did not assign
2 other employees to relieve Plaintiff and similarly situated employees of these duties in order to permit
3 them to take a rest break. Plaintiff could not take a 10-minute break during his shifts, because he could
4 not leave the children assigned to his position unsupervised. As a result, Plaintiff worked virtually
5 every single one of his shifts without the ability to take a 10-minute rest break. Defendants did not pay
6 a rest premium for instances where a compliant rest break was not provided.

7 31. Similarly, Plaintiff was sometimes required to work shifts longer than 5 hours. Many
8 times, this was due to a child requiring an employee to watch them if a parent and/or guardian was
9 running late to pick them up; or, because Plaintiff needed to supervise or care for children outside of
10 his usual duties. Either way, Plaintiff was also unable to take a meal break because he could not leave
11 children in his care unsupervised. Defendants did not have any policies or procedures in place to ensure
12 that Plaintiff and similarly situated employees received a meal break when they worked a shift longer
13 than 5 hours. As a result, Plaintiff and similarly situated employees worked shifts longer than 5 hours
14 without receiving a meal break.

15 32. Plaintiff and similarly situated employees did not sign a waiver or any form of
16 agreement in connection with their meal and/or rest breaks.

17 33. Regardless, Plaintiff and members of the Class are not paid all of the wages earned for
18 missed meal period as is required by law.

19 34. Due to Defendants' actions, Plaintiff and other members of the Class were not allowed
20 to take their meal and rest breaks at all or were not paid for all wages for missed meal or rest premiums
21 owed.

22 35. Defendants further failed to provide members of the Class with itemized wage
23 statements reflecting the wages and penalties to which they are entitled, and which further do not permit
24 members of the Class to readily determine if the wages they receive are accurate and complete.
25 Defendants would directly deposit Plaintiff's checks into his account and without providing accurate
26 check stubs.

27 36. Because Defendants failed to pay members of the Class additional wages for missed
28 meal and rest breaks and failed to accurately report those wages, Defendants failed to pay all earned

1 wages at the time members of the class, including Plaintiff, ended their employment relationship with
2 Defendant.

3 37. Defendants' unlawful conduct has been widespread, repeated and willful throughout its
4 facilities in California. Defendants knew or should have known that its policies and practices have
5 been unlawful and unfair.

6 **CLASS ACTION ALLEGATIONS**

7 38. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

8 39. Plaintiff brings this action as a class action pursuant to California Code of Civil
9 Procedure ("CCP") section 382, on behalf of the following defined Class and Subclass:

10 **Plaintiff Class:**

11 All individuals who are currently or have been employed in all Boys and
12 Girls Club locations in California by Defendants as non-exempt
13 employees during the Class, and whose working conditions are not
14 controlled by a collective bargaining agreement.

15 **Terminated Subclass:**

16 All members of the Plaintiff Class whose employment ended during the
17 Class Period.

18 40. As used throughout this Complaint, the term "Class Period" shall mean the period from
19 four years prior to the date this Complaint was filed, through and including the date judgment is
20 rendered in this matter.

21 41. Excluded from the Plaintiff Class and Terminated Subclass are any of Defendants'
22 leads, supervisors, managers, shift leaders, crew leaders, or any other employees in a managerial or
23 supervisory position that were involved in enforcing or effectuating the unlawful conduct alleged
24 herein.

25 42. **Numerosity:** Plaintiff is informed and believes, and on that basis alleges, that during the
26 Class Period, there have been over one hundred Class members. As a result, the members of the Class
27 are so numerous that joinder of all members is impossible and/or impracticable.
28

1 43. Commonality: Common questions of law and fact exist as to all members of the Class
2 and predominate over any questions affecting solely individual members of the Class. Among the
3 questions of law and fact, that are relevant to the adjudication of Class members' claims are the
4 following:

- 5 a. Whether Defendants failed to provide meal and/or rest breaks, or pay a premium
6 in lieu thereof, in violation of Labor Code §§ 226.7 and 512(a);
- 7 b. Whether Defendant' failed to provide Plaintiff and members of the Class with
8 itemized wage statements in violation of Labor Code section 226, and applicable
9 Industrial Welfare Commission Orders, and applicable State Regulations;
- 10 c. Whether Defendant had/have policies and/or practices that result in hours
11 worked not being properly compensated;
- 12 d. Whether Defendant unlawfully and/or willfully failed to pay Plaintiff and
13 members of the Class appropriately after termination in accordance with the
14 Labor Code;
- 15 e. Whether Plaintiff and members of the Class sustained damages, and if so, the
16 proper measure of such damages, as well as interest, penalties, costs, attorneys'
17 fees, and equitable relief; and,
- 18 f. Whether Defendant violated the Unfair Competition Law of California,
19 Business and Professions Code sections 17200, *et seq.*, by violating the above-
20 cited provisions, and treating Plaintiff and members of the Class unfairly by,
21 failing to pay wages upon termination, and failing to pay all compensation due
22 upon discharge.

23 44. Typicality: Plaintiff's claims are typical of the members of the Class. Plaintiff, like
24 other members of the Class, was subjected to Defendant' policies and/or practices set forth above.

25 45. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of
26 the members of the Class and has retained counsel competent and experienced in both class action and
27 employment litigation.
28

1 46. Superiority: Questions of law or fact common to Class members predominate over any
2 questions solely affecting individual Class members and class action is superior to other available
3 methods for the fair and efficient adjudication of this controversy. Class action treatment will allow a
4 large number of similarly situated Class members to simultaneously and efficiently prosecute their
5 common claims in a single forum without the needless duplication of effort and expense that numerous
6 individual actions would entail. In addition, a class action will serve the important public interest of
7 permitting Class members harmed by Defendant' unlawful policies and/or practices to effectively
8 pursue recovery of the sums owed to them.

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

11 **Public Injunctive Relief Class**

12 48. Plaintiff also brings a public injunctive relief class, pursuant to Cal. Bus. & Prof. Code
13 §§ 17203, 17535, on behalf of the following Class:

14 All members of the California General Public who have been, currently are,
15 potentially could become employees of, or who are directly or indirectly
16 negatively impacted by the practices of Defendant in the state of California,
17 and who could be subject to the violations alleged in this action.

18 49. In *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), the California Supreme Court ruled
19 that any contract that waives the statutory remedy of public injunctive relief under the Unfair
20 Competition Law is contrary to California public policy and thus unenforceable under California Law.
21 Plaintiff seeks injunctive relief under the Unfair Competition Law, *Cal. Bus. & Prof. C. § 17200 et.*
22 *seq.* that have been violated due to Defendant's unlawful conduct.

23 50. Plaintiff seeks, on behalf of the general public, to enjoin Defendant's unlawful business
24 practices in the following ways: 1) for existing employees, to cease Defendant's unlawful behavior
25 which violate California Law, as described herein, and 2) for future employees and other members of
26 the public, to enjoin Defendant from continuing its alleged unfair and unlawful practices, by correcting
27 their policies, procedures, and practices to conform with the requirements dictated under California
28 Law; 3) law-abiding business competitors, their employees, and families whose livelihoods are harmed

1 due to Defendant's unfair business practices; 4) California taxpayers who are deprived of payroll tax
2 contributions due to Defendant's unfair practices; 5) other members of the public who are harmed
3 indirectly through the spread of communicable disease due to a failure to abide by the sick leave
4 requirements.

5 51. Such unlawful business practices relate to, but not limited to, and a failure to provide
6 all wages due at termination.

7 52. Defendant's policies, practices, and procedures are drafted and approved by skilled
8 lawyers, including inside counsel, and approved by executives and vice presidents of the company,
9 who weigh the legality of said policies, practices, and procedures against the financial pros and cons
10 of said decisions from a business perspective, and how such decisions would affect Defendant's bottom
11 line. These decision-makers chose to implement protocols by which employees do not receive all
12 wages earned at the time of termination. The decision makers could have chosen to pay their employees
13 all earned wages at the time of termination, and chose not to do so, for financial gain. This decision
14 constitutes a deceptive trade practice under the UCL. Members of the California Public suffer as a
15 result.

16 53. Defendant thereby gains unfair advantage over competitors through this inadequate
17 policies, practices, and procedures, which affects the economy through decreased competition by law
18 abiding competitors, results in lower wages for California workers, and higher prices and associated
19 expenses to the California economy in general. The decision also creates a disincentive for Defendant
20 to implement the proper California Labor Law policies, practices, and procedures, which harms the
21 California economy and members of the general public. This activity greatly harms the California
22 economy, harms the taxpayers, harms consumers, harms employees, employers and businesses, harms
23 the environment, and directly and solely benefits only Defendant, its related entities and shareholders

24 54. Plaintiff seeks an injunction ending this unfair practice on behalf of the Public, as is
25 permitted under the UCL.

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1 60. Plaintiff and members of the Plaintiff Class request recovery of *Labor Code* § 226(e)
2 penalties according to proof, as well as interest, attorney's fees and costs pursuant to *Labor Code* §
3 226(e), and all other damages, attorneys' fees, costs, expenses and interest permitted by statute.

4
5 **SECOND CAUSE OF ACTION**

6 WAITING TIME PENALTIES

7 (Labor Code §§ 201-203, 558 and 558.1)

8 *Plaintiff Individually and on Behalf of the Subclass Against Defendants*

9 61. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

10 62. *Labor Code* §§ 201 and 202 require that Defendants pay their employees all wages due
11 within 24 hours after a discharge or 72 hours after a resignation from employment, if the employee has
12 given less than 72 hours' notice. *Labor Code* § 203 provides that if an employer willfully fails to timely
13 pay such wages the employer must, as a penalty, continue to pay the employee's daily wage until the
14 back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

15 63. Plaintiff and the class members are entitled to compensation for all wages earned,
16 including without limitation, premium wages for rest and meal periods not provided, but to date have
17 not received such compensation.

18 64. More than 30 days have passed since Plaintiff and Subclass members were terminated
19 from their employment with Defendants. Defendants have not paid Plaintiff and each Subclass member
20 whose employment has ended all wages owed. As a consequence of Defendants' willful conduct in
21 not paying Plaintiff and each Subclass member all earned wages at the time their employment with
22 Defendant ended, Plaintiff and each Subclass member is entitled to 30 days' wages as a penalty under
23 *Labor Code* § 203.

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1 and/or rest period.

2 72. During the relevant time period, Defendants intentionally and willfully required
3 Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff
4 and the other class members the full meal period premium for work performed during meal periods.

5 73. During the relevant time period, Defendants failed to pay Plaintiff and the other class
6 members the full meal period premium due pursuant to California Labor Code section 226.7.

7 74. Defendants' conduct violates applicable IWC Wage Order and California Labor Code
8 sections 226.7 and 512(a).

9 75. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
10 Plaintiff and the other class members are entitled to recover from Defendants one additional hour of
11 pay at the employee's regular rate of compensation for each work day that the meal or rest period is
12 not provided.

13 **FOURTH CAUSE OF ACTION**

14 REST BREAK VIOLATIONS
(California Labor Code §§ 226.7)

15 *Plaintiff Individually and on Behalf of the Class Against Defendants*

16 76. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

17 77. At all times herein set forth, the applicable IWC Wage Order and California Labor
18 Code section 226.7 were applicable to Plaintiff and the other class members' employment by
19 Defendants.

20 78. At all relevant times, California Labor Code section 226.7 provides that no employer
21 shall require an employee to work during any rest period mandated by an applicable order of the
22 California IWC.

23 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
25 shall be in the middle of each work period" and that the "rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

28 80. During the relevant time period, Defendants required Plaintiff and other class

1 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
2 period per each four (4) hour period worked.

3 81. During the relevant time period, Defendants willfully required Plaintiff and the other
4 class members to work during rest periods and failed to pay Plaintiff and the other class members
5 the full rest period premium for work performed during rest periods.

6 82. During the relevant time period, Defendants failed to pay Plaintiff and the other
7 class members the full rest period premium due pursuant to California Labor Code section 226.7

8 83. Defendants' conduct violates applicable IWC Wage Orders and California Labor
9 Code section 226.7.

10 84. Pursuant to the applicable IWC Wage Orders and California Labor Code section
11 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
12 additional hour of pay at the employees' regular hourly rate of compensation for each work day
13 that the rest period was not provided.

14
15 **FIFTH CAUSE OF ACTION**

16 **RESTITUTION/INJUNCTION**

17 (Unlawful Competition in Violation of Business and Professions Code §§ 17200 et seq. and Labor
18 Code 558.1)

19 *Plaintiff Individually and on Behalf of the Class Against Defendants*

20 85. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21 86. Section 17200 of the California *Business and Professions Code* prohibits any unlawful,
22 unfair or fraudulent business act or practice.

23 87. Plaintiff brings this cause of action in a representative capacity on behalf of the general
24 public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and
25 members of the proposed class have suffered and continue to suffer injury in fact and deprivation of
26 wages and monies as a result of Defendant' actions.

27 88. The actions of Defendant, as herein alleged, amount to conduct which is unlawful and
28 a violation of law. As such, said conduct constitutes unfair business practices, in violation of *Business
and Professions Code* §§ 17200 et seq.

1 89. Defendant' conduct as herein alleged has damaged Plaintiff and the members of the
2 Plaintiff Class by denying them wages due and payable, and by failing to provide proper wage
3 statements. Defendant' actions are thus substantially injurious to Plaintiff and the members of the
4 Class, causing them injury in fact and loss of money.

5 90. As a result of such conduct, Defendant have unlawfully and unfairly obtained monies
6 owed to Plaintiff and the members of the Plaintiff Class.

7 91. All members of the Class can be identified by reference to payroll and related records
8 in the possession of the Defendant. The amount of wages due to Plaintiff and members of the Class
9 can be readily determined from Defendant' records. The members of the proposed class are entitled to
10 restitution of monies due and obtained by Defendant during the Class Period as a result of Defendant'
11 unlawful and unfair conduct.

12 92. During the Class Period, Defendant committed, and continue to commit acts of unfair
13 competition as defined by Sections 17200 et seq. of the *Business and Professions Code*, by and among
14 other things, engaging in the acts and practices described above.

15 93. Defendant' course of conduct, acts, and practices in violation of the California laws, as
16 mentioned in each paragraph above, constitute distinct, separate and independent violations of Sections
17 17200 et seq. of the *Business and Professions Code*.

18 94. The harm to Plaintiff and the members of the Class of being wrongfully denied lawfully
19 earned but unpaid wages outweighs the utility, if any, of Defendant' policies and practices and,
20 therefore, Defendant' actions described herein constitute an unfair business practice or act within the
21 meaning of *Business and Professions Code* §§ 17200, et seq.

22 95. Defendant' conduct described herein threatens an incipient violation of California's
23 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
24 threatens or harms competition.

25 96. Defendant' course of conduct described herein further violates *Business and*
26 *Professions Code* §§ 17200, et seq., in that it is fraudulent, improper, and/or unfair.

27 97. The unlawful, unfair, and fraudulent business practices and acts of Defendant as
28 described herein above have injured Plaintiff and members of the Class in that they were wrongfully

1 denied the timely and full payment of wages owed to them.

2 98. Defendant have been unjustly enriched as a direct result of their unlawful business
3 practices alleged in this complaint and will continue to benefit from those practices and have an unfair
4 competitive advantage if allowed to retain the unpaid wages.

5
6 **SIXTH CAUSE OF ACTION**

7 REMEDIES UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004
(Labor Code §§ 2698, et seq.)

8 *By Plaintiff Individually and on Behalf of All Aggrieved Employees and the LWDA Against*
9 *Defendants*

10 99. Plaintiff re-alleges and incorporates by reference as if set forth fully herein all preceding
11 paragraphs.

12 100. Under Labor Code § 2699, any employee aggrieved by an employer's violation of the
13 Labor Code has the right to file an action on behalf of all aggrieved employees for the penalties
14 established by § 2699 and/or other Labor Code sections.

15 101. Defendant's conduct, as alleged herein, violates numerous sections of the Labor Code
16 and the applicable Wage Order(s) during the applicable limitations period, and Plaintiff is an
17 "aggrieved employee" within the meaning of Labor Code § 2699(c).

18 102. Specifically, Defendant acted in violation of Labor Code §§ 201, 202, 203, 226, 226(a),
19 226.7, 510, 512, 558, and Wage Order 5.

20 103. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff, as individuals and on behalf of and
21 other aggrieved employees, seek civil penalties for such violations, including without limitation the
22 following:

23 a. For violations of Labor Code §§ 201, 202, and 203, \$100 for each employee per
24 pay period for each initial violation and \$200 for each employee per pay period for each
25 subsequent violation;

26 b. For violations of Labor Code §§ 226(f) and 1198.5(k) for failure by an employer
27 to permit a current or former employee to inspect or receive a copy of wage and
28 personnel records, \$750 Labor Code § 226(f) and \$750 Labor Code § 1198.5(k) per
employee request;

1 c. For violations of Labor Code § 226(a), if this action is deemed to be an initial
2 citation, \$250 for each employee for each violation; alternatively, if an initial citation
3 or its equivalent occurred before the filing of this action, \$1,000 for each employee for
4 each violation; and

5 d. Pursuant to Labor Code § 558, Plaintiff and aggrieved employees are entitled to recover
6 a penalty of \$50.00 for the initial failure to compensate each underpaid employee for all hours
7 worked, at the applicable rates, or failure to pay meal and rest period premium wages, and
8 \$100.00 for each subsequent violation.

9 104. Plaintiff has complied with the procedures for bringing suit set forth in Labor Code §
10 2699.3. By letter on June 18, 2024 Plaintiff gave written notice via certified mail to the Defendant
11 and to the Labor and Workforce Development Agency (“LWDA”), through the LWDA’s online
12 application, of the specific provisions of the Labor Code that he alleges to have been violated,
13 including the facts and theories to support the alleged violations (Case No. _____).
14 Plaintiff has not received a letter from the LWDA informing Plaintiff that it does intend to investigate
15 the violations of the Labor Codes they alleged.

16 105. In addition, Labor Code § 558(a) provides:

17 Any employer or other person acting on behalf of an employer who violates, or
18 causes to be violated, a section of this chapter or any provision regulating hours and
19 days of work in any order of the Industrial Welfare Commission shall be subject to a
20 civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
21 underpaid employee for each pay period for which the employee was underpaid in
22 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent
23 violation, one hundred dollars (\$100) for each underpaid employee for each pay period
24 for which the employee was underpaid in addition to an amount sufficient to recover
25 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the
26 affected employee.

27 106. At all times relevant, Defendants, and each of them, have routinely and systematically
28 failed to comply with Wage Order 5, as detailed above, including by failing to pay Plaintiff and
aggrieved employees all wages due, including the minimum wage, overtime or double time wages
required by law, and failing to provide compliant, duty free meal periods and rest periods or pay the
premium wages thereby due.

107. As a proximate result of Defendant’s failure to pay all wages as alleged above, Plaintiff

1 and aggrieved employees are entitled to recover from Defendant penalties pursuant to Labor Code §
2 558 as may be established according to proof at trial, for an award of interest, including prejudgment
3 interest, at the legal rate, and for costs of suit.

4 108. Pursuant to Labor Code § 2699(g)(1), Plaintiff seeks awards of reasonable costs and
5 attorneys' fees in connection with his claims for civil penalties.

6
7 **ATTORNEY'S FEES AND COSTS**

8 109. Plaintiff is entitled to fees and costs, pursuant to California law, including, without
9 limitation, *Code of Civil Procedure* § 1021.5, *Labor Code* §§ 226, 1194 and 2698 et seq. Further,
10 enforcement of statutory provisions enacted to protect workers and to ensure prompt payment of wages
11 due employees is a fundamental public interest in California. Consequently, Plaintiff's success in this
12 action will result in the enforcement of important rights affecting the public interest and will confer a
13 significant benefit upon the public.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff and members of the Class pray for judgment as follows:

- 16 1. An order that the action be certified as a class action;
17 2. An order that Plaintiff be appointed class representatives;
18 3. An order that counsel for Plaintiff be appointed class counsel;
19 4. For nominal damages;
20 5. For compensatory damages;
21 6. For Wages, including Premium Wages;
22 7. For restitution of all monies due to Plaintiff and members of the Class, and disgorged
23 profits from the unlawful business practice of Defendant;
24 8. For penalties pursuant to Labor Code §§ 200, 201, 202, 203, 226, 226.7, 512, 558,
25 1198.5, 2698 et seq.;
26 9. For waiting time penalties pursuant to Labor Code § 203;
27 10. For interest accrued to date;
28 11. For costs of suit and expenses pursuant to Labor Code §§ 226 and 1194;

12. For reasonable attorneys' fees pursuant to Labor Code §§ 226, 1194 and 2698 et seq;
13. For public injunctive relief pursuant to Cal. Bus & Prof Code §§ 17200 et. seq.;
14. For all such other and further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, demand a trial by jury for himself and all Class members on all claims so triable.

Dated: June 18, 2024

By: _____


Todd M. Friedman
Attorney for Plaintiff