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Attorney for Plaintiff,
BEN DINH

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ALAMEDA**

BEN DINH, an individual, on his own
behalf and on behalf of all others similarly
situated,

Plaintiffs,

vs.

AMPEX DATA SYSTEMS
CORPORATION, a Delaware corporation;
and DOES 1 through 100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
10/07/2024

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

Case No.: 24CV084864

Assigned for All Purposes to

Judge: Noël Wise

Department: 21

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. FAILURE TO PAY OVERTIME (Cal. Labor Code §§ 510, 558, 1194, 1194.3, 1198; Wage Order No. 1);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119; IWC Wage Order No. 1);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 1);**
- 4. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; Wage Order No. 1);**
- 5. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203; Wage Order No. 1);**
- 6. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5);**

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7. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 *et seq.*). and
8. PRIVATE ATTORNEY GENERAL ACT (“PAGA:”)

Action Filed: July 25, 2024
Trial Date: Not Set

All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

BEN DINH (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by AMPEX Data Systems Corporation (“AMPEX” or “Defendant”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself, and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to: pay overtime wages, minimum wages due to rounding, provide meal breaks (or pay the statutory compensation due), issue accurate wage statements, pay all wages upon termination and provide personnel records.

2. Plaintiffs have worked as Mechanical Assemblers and other non-exempt employees for Defendant in California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spend their workdays as Mechanical Assemblers and other employees, under illegal and highly regimented circumstances. That regimen results from Defendant’s insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay overtime wages due to off the clock work, failing

1 to provide minimum wages, failing to provide meal breaks (or pay the statutory compensation
2 due); failing to issue accurate wage statements, failing to pay all wages on termination, failing to
3 provide personnel records and by using other unlawful stratagems to ensure that labor costs
4 remain artificially low.

5 4. Plaintiff brings this class action to recover, among other things, wages and
6 penalties from unpaid wages earned and due, including but not limited to, overtime wages,
7 minimum wages, premium pay for failure to afford proper meal breaks, wages due to discharged
8 or quitting employees, penalties for failure to provide accurate itemized wage statements,
9 penalties for failure to provide personnel records, and interest, attorneys' fees, costs, and
10 expenses.

11 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
12 himself and all members of the class, to compensate these workers for the unpaid wages and to
13 protect current and future workers of Defendant from being subjected to similar wage theft and
14 otherwise unlawful working conditions.

15 6. Plaintiff also brings an action seeking relief for Defendant's violations of
16 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
17 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
18 business practices, as well as injunctive relief.

19 7. Plaintiff now seeks to amend his Complaint to add a cause of action pursuant to
20 PAGA under Labor Code §§ 2699 *et seq.*

21 JURISDICTION AND VENUE

22 8. This Court has jurisdiction over this First Amended Complaint under Code of
23 Civil Procedure
24 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions*
25 *Code* §§ 17200 *et seq.* Plaintiff Ben Dinh brings this First Amended Complaint on his own behalf
26 and on behalf of all persons in the Class as defined in paragraph 17 below.

27 9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
28 395.5, because the claims made, and the *Labor Code* violations as against the persons identified

herein, occurred in the County of Alameda and because Defendant owned and operated their business in the County of Alameda.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Union City, California;
- (b) Employed as an hourly employee for Defendant in Hayward, California;
- (c) Did not receive overtime wages due to off the clock work in violation of *Labor Code* §§510, 1198 and the applicable Wage Orders;
- (d) Did not receive minimum wages due to rounding as required by *Labor Code* §§1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (g) When terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201; and
- (h) Was not provided his personnel records as mandated by *Labor Code* §1198.5. Each of these was a violation of the *Labor Code*.

DEFENDANT

11. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant AMPEX is, and at all times mentioned herein was:

- (a) A Delaware corporation, with a principal place of business at 26460 Corporate Avenue, Hayward, California 94545. Defendant has been authorized to do business and has been doing business in the County of Alameda;
- (b) The former employer of Plaintiff and the current and former employer of the putative Class members;

- 1 (c) Paid Plaintiff and all Class Members on an hourly basis;
2 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
3 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
4 (f) Failed to provide Plaintiff and all putative Class members with meal
5 periods, failed to provide Plaintiff and all putative Class Members with
6 accurate itemized wage statements;
7 (g) Failed to issue final paychecks timely to Plaintiff and all putative Class
8 Members; and
9 (h) Was not provided with personnel records. Each of these was a violation of
10 the *Labor Code*.
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12 12. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
14 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
15 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true names
16 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

17 13. Plaintiff is informed and believes, and based on that information and belief alleges,
18 that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or
19 are authorized to do, or are otherwise doing, business in the State of California. Specifically,
20 DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business
21 in the County of Alameda. Each of the Defendants DOES 1 through 100 was the managerial
22 agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or
23 representative of one or more of the other Defendants named herein, and acting with permission,
24 authorization, and/or ratification and consent of the other Defendants.

25 14. Plaintiff is informed and believes, and based on that information and belief alleges,
26 that the Defendants named in this First Amended Complaint, including DOES 1 through 100,
27 inclusive, are responsible in some manner for one or more of the events and happenings that
28 proximately caused the injuries and damages hereinafter alleged.

15. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

16. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendants, and each of them, represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

17. The Class (“the Class”) is defined as follows:

(a) “All current and former employees who were hourly paid employees of Defendant and worked for Defendant in California at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

(b) “All persons who were hourly paid employees of Defendant and worked for Defendant in California and left the employ of Defendant at any time during the

1 period commencing on the date that is within one (1) year prior to the filing of this
2 Complaint and continuing through the present date (the “Class Period”).

3 18. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
4 amend or modify the Class description with greater specificity or further division into subclasses
5 or limitation to particular issues.

6 **B. Maintenance of the Action**

7 19. Plaintiff brings this action individually and on behalf of himself and as
8 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
9 17204 and *Code of Civil Procedure* § 382.

10 **C. The Class Requisites**

11 20. At all material times, Plaintiff was a member of the Class.

12 21. The Class action meets the statutory prerequisites for maintaining a class action
13 under Code of Civil Procedure § 382 in that:

- 14 (a) The persons who comprise the Class are so numerous that the joinder of all
15 those persons is impracticable and the disposition of their claims as a Class
16 will benefit the parties and the Court;
- 17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this First Amended Complaint are common to the Class and
19 will apply uniformly to every Class member;
- 20 (c) The claims of the representative Plaintiff are typical of the claims of each
21 Class member. Plaintiff, like all Class members, has sustained damages
22 arising from Defendant’s violations of the laws of the State of California.
23 Plaintiff, and the Class members, were and are similarly or identically
24 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
25 pattern of misconduct engaged in by the Defendant;
- 26 (d) The representative Plaintiff has, and will continue to, fairly and adequately
27 represent and protect the interests of the Class and has retained counsel who
28 are competent and experienced in class action litigation. There are no

1 material conflicts between the claims of the representative Plaintiff and the
2 Class members that would make class certification inappropriate. Counsel
3 for the Class will vigorously assert the claims of all Class members.

4 22. The persons who comprise the Class are so numerous that joining all of them is
5 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
6 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
7 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
8 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for Plaintiff
9 are experienced, qualified and generally able to conduct complex class action litigation.

10 23. The Court should permit the action to be maintained as a class action under *Code*
11 *of Civil Procedure* § 382 because:

- 12 (a) The questions of law and fact common to the Class predominate over any
13 question affecting only individual members;
- 14 (b) A class action is superior to any other available method for fairly and
15 efficiently adjudicating the claims of the Class;
- 16 (c) The Class members are so numerous that it is impractical to bring all of
17 them before the Court;
- 18 (d) Plaintiff and other Class members will not be able to obtain effective and
19 economic legal redress unless the action is maintained as a class action;
- 20 (e) There is a community of interest in obtaining appropriate legal and
21 equitable relief for the statutory violations, and in obtaining adequate
22 compensation for the damages and injuries for which Defendant is
23 responsible in an amount sufficient to adequately compensate the Class
24 members;
- 25 (f) Without Class certification, the prosecution of separate actions by
26 individual Class members would create a risk of:
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- 1 i. Inconsistent or varying adjudications for individual Class members
2 that would establish incompatible standards of conduct for
3 Defendant; and/or,
4 ii. Adjudication for individual Class members that would, as a practical
5 matter, dispose of other non-party members' interests, or that would
6 substantially impair or impede the non-parties' ability to protect their
7 interests, by, for example, potentially exhausting the funds available
8 from Defendant, and

9 (g) Defendant has acted or refused to act on grounds generally applicable to the
10 Classes, making final injunctive relief appropriate for the Class, as a whole.
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12 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
13 that would set forth the subject and nature of the action. The Defendant's own business records
14 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
15 further notices may be required, Plaintiff would contemplate using additional media and/or
16 mailing.

17 **GENERAL ALLEGATIONS**

18 25. At all times material hereto, Defendant has been and is, a weapons/defense
19 manufacturer.

20 26. Plaintiff and members of the Class were employed as Mechanical Assemblers and
21 other non-exempt employees in California at various times during the Class Period.

22 27. The employment by Defendant of the Class Members, and each them, is governed
23 by Industrial Welfare Commission Wage Order 1, which covers those persons employed in the
24 manufacturing industry.

25 **THE CONDUCT**

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27 28. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
28 Plaintiff and members of the Class wages and compensation owed under California law.

29. Starting on or about January 31, 2022, and continuing to October 30, 2023, Defendant employed Plaintiff on an hourly basis as a Mechanical Assembler at its location in Hayward, California.

30. While employed by Defendant as a Mechanical Assembler, Plaintiff was paid \$32.96 per hour.

OFF-THE-CLOCK WORK

31. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585.

32. Defendant required Plaintiff and the Class to regularly perform compensable tasks pre-shift off-the-clock for which they did not receive any compensation. Specifically, Defendant required Plaintiff and Class members to don protective gear such as nose-plugs, gloves, masks, etc. prior to entering their start times on their timecards. The donning took approximately 5 minutes. As a result, and because they improperly treated such pre-shift activities as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

FAILURE TO PAY OVERTIME WAGES

33. Under California law, non-exempt employees as defined by Wage Order 1, are entitled to premium wages for overtime worked. Under California law, an hourly paid employee is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours of work in a week or work seven days in a row.

34. As alleged above, Defendant required Plaintiff and the Class to regularly perform compensable tasks pre-shift off the clock for which they did not receive any compensation. Additionally, Plaintiff and Class members' meal breaks were routinely afforded late.

35. At all times during the relevant time period, Plaintiff and the Class routinely worked schedules such that they were due pay at overtime rates. During this period, it was the practice and policy of Defendant to not pay employees overtime wages. Monies for unpaid overtime remain due and owing.

FAILURE TO PAY MINIMUM WAGES

36. Under California law, non-exempt employees as defined by Wage Order 1, are entitled to minimum wages.

37. Under California law, an hourly paid employee is entitled to be paid a minimum wage. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 states “any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage Order No. 1-2001, obligates employers to pay each employee minimum wages for all hours worked.

38. These minimum wage standards apply to each hour employees worked or were subject to control by the employer for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee or subject to the employer’s control is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

39. At all times during the relevant time period, it was the practice and policy of Defendant to pay employees less than minimum wage rates due to off the clock work and the lack of proper meal breaks. Further, Plaintiff’s paystubs show rounded hours. Defendant allowed Plaintiff and Class members to arrive between 6 and 8 am. When Plaintiff arrived prior to 6, he wrote the exact time he arrived, but his paystubs show rounding of his hours. Monies for these underpaid amounts remain due and owing.

40. Defendant required Plaintiff and the Class to regularly perform compensable tasks off-the-clock for which they did not receive any compensation.

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1 41. At all times during the relevant time period, Plaintiff and the Class routinely
2 worked schedules such that they were due pay at minimum wage rates. During this period, it was
3 the practice and policy of Defendant to not pay employees' minimum wages. Monies for unpaid
4 minimum wages remain due and owing.

5 **EXCLUSION OF BONUSES FROM REGULAR RATE OF PAY**

6 42. California law uses the terms "compensation" and "pay" interchangeably and
7 requires that all applicable remuneration, including but not limited to, commissions, and/or non-
8 discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers, etc., be
9 included when calculating an employee's regular rate of pay.

10 43. Defendant failed to properly pay and calculate wages due to excluding bonuses
11 from regular rate of pay calculations. Such payments are required under California law to be
12 included in an employee's regular rate of pay for wage calculation. Defendant failed to do so,
13 thereby failing to pay employees their full wages as required under the Labor Code.

14 44. Plaintiff and members of the Class received bonuses that must be included when
15 calculating their regular rates of pay for purposes of wages. However, Defendant failed to
16 correctly calculate Plaintiff and members of the Class's regular rate of pay to include all
17 applicable remuneration, including, but not limited to, bonuses.

18 45. Plaintiff and Class members received holiday bonuses once per year. However,
19 their paystubs do not show those bonuses.

20 **LATE AFFORDED MEAL BREAKS**

21 46. Plaintiff and the Class members were routinely not afforded proper meal breaks.
22 Meal breaks were routinely afforded after the fifth hour of work. Plaintiff and Class members
23 were not paid premium pay for late afforded meal breaks.

24 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

25 47. As a result of Defendant's failure to pay employees required overtime wages,
26 minimum wages and failure to afford timely meal breaks, the wage statements issued to the
27 employees did not comply with *Labor Code* §226 and California Industrial Welfare Commission
28 ("IWC") Wage Order 1 in that they did not accurately reflect all wages earned and due and owing.

1 **FAILURE TO PAY WAGES DUE UPON TERMINATION AND/OR RESIGNATION**

2 48. As a further result of Defendant's failure to pay employees at required overtime
3 wage rates due to off-the-clock work, minimum wages, for meal breaks not properly afforded,
4 when the employees left their employ, they were not timely paid all wages due them, as required
5 by *Labor Code* §§ 201, 202 and Wage Order 1. Further, it was the practice of Defendant to not
6 pay employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202
7 and Wage Order 1.

8 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

9 49. Defendant failed to allow Plaintiff to timely inspect his personnel records and
10 payroll file.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order 1 By Plaintiff Against**
14 **Defendant and Does 1 through 100)**

15 50. Plaintiff and the Class reallege and incorporate by reference all of the allegations
16 set forth in this First Amended Complaint.

17 51. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code
18 §§510, 1194, and 1198, and IWC Wage Order No. 1, Defendant was required to compensate
19 Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight
20 (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh
21 (7th) consecutive day of any work week.

22 52. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
23 who had not been paid overtime compensation could recover the unpaid balance of the full
24 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
25 fees and costs of suit.

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1 53. Pursuant to IWC Wage Order No. 1-2001, § 3, “Employment beyond eight (8)
2 hours in any workday is permissible provided the employee is compensated for such overtime at
3 not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours
4 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...

5 54. California Labor Code section 558 provides in pertinent part:

6 (a) Any employer or other person acting on behalf of an employer who
7 violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the Industrial
Welfare Commission shall be subject to a civil penalty as follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid
10 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

11 (2) For each subsequent violation, one hundred dollars (\$100) for each
12 underpaid employee for each pay period for which the employee was
13 underpaid in addition to an amount sufficient to recover underpaid
wages.

14 (3) Wages recovered pursuant to this section shall be paid to the affected
employee...

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

17 55. As alleged above, Defendant required Plaintiff and the Class to regularly perform
18 compensable tasks pre-shift off-the-clock for which they did not receive any compensation.
19 Defendant required Plaintiff and the Class to don protective gear prior to clocking in for shifts.

20 56. Throughout Plaintiff’s employment, Defendant failed and refused to pay and
21 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

22 57. The foregoing overtime compensation is owed and unpaid. As a direct and
23 proximate result of Defendant’s failure and refusal to pay overtime, Plaintiff and Class members
24 suffered damages in an amount to be proven at trial.

25 58. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
26 counsel in order to enforce Plaintiff’s rights to overtime pay, is entitled to recover Plaintiff’s
27 attorneys’ fees, costs and interest.

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1 **SECOND CAUSE OF ACTION**

2 **FOR FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING**

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

5 59. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this First Amended Complaint.

7 60. *Labor Code* § 1197 states the California requirement that employees must be paid
8 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
9 wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the
10 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
11 of this minimum wage.” IWC Wage Order 1-2001 also obligates employers to pay each employee
12 minimum wages for all hours worked. These minimum wage standards apply to each hour
13 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
14 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
15 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
16 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

17 61. Here, Plaintiff and Class members were required to engage in off the clock
18 activities and they were not paid for this off-the-clock time. Defendant failed to pay Plaintiff and
19 the Class for these off-the clock activities and as result thereof, Plaintiff and the Class were not
20 paid minimum wages that was due to them. Further, Defendant’s failure to afford meal breaks
21 also resulted in Plaintiff and the Class not being paid minimum wages that was due to them.
22 Additionally, Defendant rounded down Plaintiff and Class members hours.

23 62. California Labor Code section 558 provides in pertinent part:

24 (a) Any employer or other person acting on behalf of an employer who
25 violates, or causes to be violated, a section of this chapter or any provision
26 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

27 (1) For any initial violation, fifty dollars (\$50) for each underpaid
28 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee... (c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

63. *Labor Code* § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

64. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

65. Plaintiff and the other Class Members suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendant's unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

66. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

THIRD CAUSE OF ACTION

FAILURE TO PAY FOR MEAL BREAKS

(Labor Code § 226.7 and IWC Wage Order No. 1 By Plaintiff Against Defendant and Does 1 through 100)

67. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

68. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by Industrial Wage Order No. 1. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an employee to work during a meal or rest break or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

69. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

70. IWC Order No. 1-2001(11)(A) provides, in relevant part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

71. IWC Order No. 1-2001 (11)(c) further provides, in relevant part: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

72. Section 512(a) of the California Labor Code provides, in relevant part, that:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30-minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30-minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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1 73. The Labor Code and Wage Order provisions cited above require California
2 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
3 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
4 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
5 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
6 of their shifts.

7 74. Plaintiff and the Class' meal breaks were routinely afforded after the fifth hour.

8 75. As alleged herein, Plaintiff and the members of the Class were routinely required
9 to work through their meal period at the fifth hour of their shifts with Defendant's endorsement,
10 encouragement, knowledge and acquiescence.

11 76. Under California law, employers must also record their employees' meal periods:
12 "Every employer shall keep accurate information with respect to each employee, including the
13 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
14 ... need not be recorded." IWC Order No. 1, § (7)(A)(3). Where the employer has failed to keep
15 records required by statute, the consequences of such failure should fall on the employer, not the
16 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
17 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendant
18 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
19 unless "all work ceases", Defendant knew or should have known its employees were regularly
20 not afforded timely meal periods during the Class Period.

21 77. Defendant has a policy or practice of failing to ensure that Plaintiff and members
22 of the Class take the meal periods required by California Labor Code §226.7 and IWC Wage
23 Order No. 1-2001 §11.

24 78. By their actions in not affording Plaintiff and Class Members timely meal periods,
25 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 4 in the amount
26 of one additional hour of pay at the employee's regular rate of compensation for each work period
27 during each day in which Defendant failed to provide employees with statutory timely off-duty
28 meal periods.

79. Defendant also has a policy or practice of failing to pay each of their employees who was not provided with a meal period as required an additional one hour of compensation at each employee's regular rate of pay.

80. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring a private right of action to recover wages due based on the deprivation of timely meal periods under Cal. Labor Code § 226.7(b).

81. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage Orders.

FOURTH CAUSE OF ACTION

FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE

ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)

82. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

83. Pursuant to IWC Wage Order No. 1, Defendant was the employer of Plaintiff and the Class.

84. Pursuant to California Labor Code sections 226, and Wage Order 1-2001 section 7, Defendant is required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

85. Defendant is further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

1 86. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
2 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
3 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in
4 which the employer knowingly and intentionally failed to provide accurate itemized statements
5 to the employee causing the employee to suffer injury.

6 87. Notwithstanding, Defendant has engaged in a uniform practice of refusing to
7 maintain and provide the accurate records and wage statements required by California law.

8 88. Throughout the Class Period, Defendant intentionally and knowingly provided
9 Plaintiff and other members of the Class with weekly itemized wage statements containing
10 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
11 the payments owed to Plaintiff and the members of the Class for overtime wages due to off the
12 clock work, minimum wages due to rounding, and premium pay for meal breaks, were not
13 included in gross wages earned by Plaintiff and members of the Class. Further, Defendant failed
14 to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately
15 showing the number of hours worked and the rates paid.

16 89. Further, Plaintiff's paystub dated 11/10/2023 does not list rates for "Regular".
17 Additionally, that paystub does not list rates for "PTO".

18 90. As a result, Plaintiff and members of the Class have been injured by having been
19 deprived of the true facts pertaining to their compensation and employment.

20 91. Plaintiff and members of the Class were damaged by these failures because,
21 among other things, the failures led them to believe that they were not entitled to overtime wages,
22 premium pay for meal breaks not properly afforded, even though they were so entitled and these
23 failures hindered them from determining the amounts of wages owed to them.

24 92. Plaintiff and members of the Class are entitled to the amounts provided in Labor
25 Code §226(e), plus attorneys' fees and costs.

26 93. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
27 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided
28 by law for Defendant's improper conduct.

1 **FIFTH CAUSE OF ACTION**

2 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

3 **(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)**

4 94. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this First Amended Complaint.

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

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

12 97. Plaintiff and the Class were discharged and/or resigned from Defendant's employ
13 and Defendant willfully failed to pay Plaintiff and the Class wages due them for overtime,
14 minimum wages and for meal breaks not properly afforded.

15 98. Plaintiff's last pay was 11 days late and did not include waiting time penalties.
16 Plaintiff was given his last pay on 11/10/2023, the regularly scheduled payday, not on the day he
17 was terminated; 10/30/2023.

18 99. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages
19 for each day he or she was not timely paid, not to exceed 30 days' wages.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

22 **(Violation of Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)**

23 100. Plaintiff and the Class reallege and incorporate by reference all of the allegations
24 set forth in this First Amended Complaint.

25 101. California Labor Code Section 1198.5 provides:

- 26 (a) Every current and former employee, or his or her representative, has the right
27 to inspect and receive a copy of the personnel records that the employer
28 maintains relating to the employee's performance or to any grievance
concerning the employee.

1 (b) The employer shall make the contents of those personnel records available
2 for inspection to the current or former employee, or his or her representative,
3 at reasonable intervals and at reasonable times, but not later than 30 calendar
4 days from the date the employer receives a written request, unless the current
5 or former employee, or his or her representative, and the employer agree in
6 writing to a date beyond 30 calendar days to inspect the records, and the
7 agreed-upon date does not exceed 35 calendar days from the employer's
8 receipt of the written request to inspect the records. Upon a written request
9 from a current or former employee, or his or her representative, the employer
10 shall also provide a copy of the personnel records, later than 30 calendar
11 days from the date the employer receives the request...

12 (k) If an employer fails to permit a current or former employee, or his or her
13 representative, to inspect or copy personnel records within the times specified I
14 this section... the current or former employee may recover a penalty of seven
15 hundred fifty dollars (\$750) from the employer.

16 (1) A current or former employee may also bring an action for injunctive relief
17 to obtain compliance with this section and may recover costs and reasonable
18 attorney's fees in such an action.

19 102. Additionally, pursuant to Wage Order 1, at section 7 re: Records, employers are
20 required to keep accurate payroll records on each employee, and such records must be made
21 readily available for inspection by the employee upon reasonable request. The employer must
22 also maintain accurate production records.

23 103. On or about July 24, 2024, Plaintiff' counsel issued a written request to Defendant
24 for copies of his personnel records.

25 104. Under California Labor Code §§226, 432 and 1198.5, such records were to include
26 all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's
27 counsel and Defendant did not enter into an agreement to enlarge the time for Defendant's
28 compliance, and Defendant failed and refused to permit Plaintiff copies of his records.

105. As a direct result and consequence of Defendant's failure and refusal to permit
Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree
mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of
Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of
\$750 based upon Defendants' violation of §1198.

1 **SEVENTH CAUSE OF ACTION**

2 **(Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.* By**
3 **Plaintiffs Against Defendant and Does 1 through 100)**

4 106. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this First Amended Complaint.

6 107. Pursuant to IWC Wage Orders No. 1, Defendant was the employer of Plaintiff and
7 the Class. Defendant is also a "person" as that term is defined in Business & Professions Code
8 §17021.

9 108. The Business & Professions Code defines unfair competition as any unlawful,
10 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
11 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
12 overtime wages; (2) pay minimum wages; (3) pay premium pay for meal breaks not properly
13 afforded; (4) furnish Plaintiff and the Class with accurate itemized wage statements, (5) pay
14 Plaintiff and the Class wages due when leaving their employ, (6) provide personnel records, all
15 in violation of Business & Professions Code §§ 17200 *et seq.*

16 109. By and through the unfair and unlawful business practices described herein,
17 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
18 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
19 Plaintiff and the Class.

20 110. All the acts described herein are violations of, among other things, the Labor Code
21 and Industrial Commission Wage Order No. 1, are unlawful and in violation of public policy; and
22 in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair
23 and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

24 111. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
25 to restore to them the money and property which Defendant has acquired, or of which Plaintiff
26 and the Class have been deprived by means of the above-described unfair and unlawful business
27 practices.

112. Plaintiff and the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair and unlawful and that injunctive relief should be issued restraining Defendant from engaging in any of the above described unfair and unlawful business practices in the future.

113. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendant. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant is restrained from continuing to engage in these unfair and unlawful business practices. In addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

EIGHTH CAUSE OF ACTION

(Damages Pursuant to Private Attorney General Act By Plaintiffs Against Defendant))

114. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

115. Plaintiff brings this action on his own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover unpaid wages, including but not limited to failure to pay minimum wages and overtime wages, meal period and rest period violations, inaccurate wage statement penalty, and waiting time penalty violations as set forth in this pleading.

116. On July 24, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through his attorneys, uploaded a Private Attorney General Act ("PAGA") claim to the State of California Labor and Workforce Development Agency ("LWDA") and sent a letter via Certified Mail Return Receipt Requested to the defendant.

117. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received a notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

118. Plaintiff has complied with the administrative exhaustion requirements of PAGA.

119. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

1 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
2 and against Defendant as follows:

3 1. For compensatory damages in the amount of overtime wages due to Plaintiff and
4 Class Members, according to proof;

5 2. For compensatory damages in the amount of minimum wages due to Plaintiff and
6 Class Members, according to proof;

7 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class
8 Members for each workday that a meal period was not properly provided;

9 4. For an award of consequential damages in Plaintiff and Class Members' favor and
10 against Defendant, in an amount to be proven at trial;

11 5. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

12 6. For payment to Plaintiff and Class members of waiting time penalties pursuant to
13 *Cal. Lab. Code* §203, in an amount equal to his and Class members' respective daily rates of pay
14 at the time of termination or layoff, multiplied by the total amount of days elapsed between the
15 date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up
16 to a maximum of 30 days' pay, according to proof;

17 7. For specific relief enforcing waiting time penalties of 30 days of per diem wages
18 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

19 8. For prejudgment interest accrued on all due and unpaid overtime and minimum
20 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
21 1194(a), according to proof;

22 9. For injunctive relief requiring Defendant to comply with Labor Code
23 1198.5(b)(1);

24 10. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 1-
25 2001(14);

26 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5 according
27 to proof;

28

12. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to Cal. Labor Code §2699(g)

13. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, Cal. Labor Code §§ 1194, 218.5, 1198.5 and/or Cal. Code of Civ. Proc. §1021.5;

14. For an award of restitution of wages to Plaintiff and Class members in an amount equal to the amount of wages owed and unpaid, according to proof;

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

16. For other injunctive relief ordering Defendant to notify Plaintiff and Class members that they have not been paid the proper amounts in accordance with California law;

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

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

DEMAND FOR JURY TRIAL

Plaintiff Ben Dinh hereby respectfully requests a trial by jury for all claims and issues raised in his First Amended Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: October 7, 2024

By: _____


Jasmine J. Badawi
Attorneys for Plaintiff,
BEN DINH

1 **PROOF OF SERVICE**

2 I certify and declare that I am over the age of 18 years and not a party to this action and
3 that my place of employment is in the County of Los Angeles, State of California, located at
4 880 Apollo St., Suite 336, El Segundo, California 90245.

5 On this date hereon, I served a true copy of the following document(s):

6 **PLAINTIFF'S FIRST AMENDED COMPLAINT**

7 ☐ by personally delivering it to the person(s) indicated below in the manner as provided by
8 Rule of the California Rules of Civil Procedure;

9 ☐ by transmitting it via facsimile machine to a telephone number listed below and known or
10 represented to me to be the receiving telephone number for the facsimile copy transmission of
11 the parties/persons/firms listed below;

12 ☒ by transmitting it via electronically to the electronic mail address listed below;

13 ☐ by overnight delivery service to be delivered the next day to the parties/persons/firms listed
14 below;

15 ☐ by United States Mail – First Class Postage to the parties/persons/firms listed below:

16 Jeffrey A. Dinkin, Esq. 17 Jared W. Speier, Esq. 18 Cory Baker, Esq. 19 STRADLING YOCCA 20 CARLSON & RAUTH LLP 21 800 Anacapa Street, Suite A 22 Santa Barbara, CA 93101 Tel: (805) 730-6800 jdinkin@stradlinglaw.com jspeier@stradlinglaw.com cbaker@stradlinglaw.com	ATTORNEYS FOR DEFENDANTS, AMPEX DATA SYSTEMS CORPORATION
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23 I declare under penalty of perjury under the laws of the United States and the State of
24 California that the foregoing is true and correct.

25 Executed on October 7, 2024, at El Segundo, California, 90245.

26
27 Nicole Bathon
28 Nicole Bathon