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FILED
Superior Court of California
County of Los Angeles
10/21/2024

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ROBERTO ESQUEDA, an individual, on
behalf of himself and all others similarly
situated;

Plaintiff,

vs.

ECOM EXP INC, a California Corporation;
ECOM EXP LLC, a California Limited
Liability Company; and DOES 1 through 100,
inclusive;

Defendants.

CASE NO.: 24STCV19562
[Assigned for ALL Purposes to the Honorable
Judge William F. Highberger – Department
10]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **OVERTIME WAGE VIOLATIONS
(LABOR CODE §§ 510 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 516);**
- (4) **FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Roberto Esqueda (hereinafter, “Plaintiff”), individual and on behalf of the State
2 of California and all others similarly situated, hereby brings this Class Action Complaint against
3 Ecom Exp Inc, a California Corporation, Ecom Exp LLC, a California Limited Liability
4 Company, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all other similarly situated, hereby bring this
8 class action for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200, et. seq., Labor Code §§ 201-203, 226, 226.7, 510, 512, 558.1 516, 1194, 1198,
10 2698 *et seq.*, 2802, 2804, and Industrial Welfare Commission Wage Order No. 9 (“Wage Order
11 9”), in addition to seeking declaratory relief and restitution. This class action is brought pursuant
12 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
13 violations of the California Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business,
19 have an agent or agents within the County of Los Angeles and/or otherwise are found within the
20 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
21 service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a Warehouse
27 Worker. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by California

1 Labor Code §§ 201-203, 226, 226.7, 510, 512, 516, 558.1, 1194, 1198, 2698, *et seq.*, 2802, 2804,
2 California Business and Professions Code § 17200 *et seq.* (Unfair Competition), and Wage Order
3 9, which sets employment standards for occupations in the transportation industry.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
6 do) business by offering merchandise distribution services out of their warehouse in Los Angeles
7 County, and employed Plaintiff within Los Angeles County and the State of California and,
8 therefore, were (and are) doing business in Los Angeles County and the State of California.

9 5. Plaintiff does not know the true names or capacities, whether individual, partner,
10 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
12 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
13 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
14 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
15 and proximately caused Plaintiff to be subject to the unlawful employment practices, wrongs,
16 injuries and damages complained of herein.

17 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were the employers of Plaintiff and all members of the Classes (as defined in
19 Paragraph 20).

20 7. At all times herein mentioned, each of said Defendants participated in the doing
21 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
22 Defendants, and each of them, were the agents, servants, and employees of each and every one of
23 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
24 were acting within the course and scope of said agency and employment. Defendants, and each
25 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
26 omissions complained of herein.

27 8. At all times mentioned herein, Defendants, and each of them, were members of
28 and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
3 Members (as defined in Paragraph 20).

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 provide merchandise distribution services out of their warehouse in Los Angeles County,
7 California.

8 10. Plaintiff was employed by Defendants as a Warehouse Worker from
9 approximately January 1, 2024, through April 2, 2024, at Defendants' Los Angeles warehouse.
10 Throughout his employment, Plaintiff's duties included breaking down merchandise brought into
11 the warehouse, building boxes, and organizing pallets.

12 11. Plaintiff generally worked five days per week from approximately 9:00 a.m. until
13 at least 5:30 p.m., and/or from approximately 3:00 p.m. until at least 11:00 p.m. Plaintiff
14 sometimes worked over 8 hours in a shift and/or over 40 hours in a workweek. Plaintiff received
15 compensation by the hour at an hourly rate of \$20 per hour.

16 12. During the relevant period, Defendants misclassified Plaintiff and, on information
17 and belief, other non-exempt employees as "independent contractors." At all times relevant
18 herein, Defendants' independent contractor misclassification of Plaintiff and, on information and
19 belief, other non-exempt employees were in fact a subterfuge by Defendants to avoid granting
20 employee status to Plaintiff and, on information and belief, to other non-exempt employees.

21 13. During the relevant period, Plaintiff and, on information and belief, other non-
22 exempt employees were not free from Defendants' control and direction in connection with the
23 performance of their work, they performed work that was not outside the usual course of
24 Defendants' business, and/or they did not customarily engage in an independently established
25 trade, occupation, or business of the same nature as that involved in the work that they performed
26 for Defendants.

27 14. During the relevant period, Defendants' payroll policies and/or practices resulted
28 in Plaintiff, and on information and belief, other non-exempt employees not being paid overtime

1 wages for all overtime hours they worked. Specifically, Defendants, as a policy and/or practice,
2 employed and suffered and/or permitted Plaintiff and, on information and belief, other non-
3 exempt employees to work shifts over 8 hours and/or workweeks over 40 hours but Defendants'
4 payroll policy and/or practice did not compensate Plaintiff and, on information and belief, other
5 non-exempt employees at the rate of no less than one and one-half times their regular rate of pay
6 for their overtime hours worked.

7 15. During the relevant period, Defendants' unlawful meal period policies and/or
8 practices failed to provide Plaintiff and, on information and belief, other non-exempt employees
9 a first uninterrupted 30-minute meal period before the end of their fifth hour of work due to the
10 volume of work Plaintiff was assigned to complete before the end of his fifth hour of work. In
11 addition, Defendants often required Plaintiff and, on information and belief, other non-exempt
12 employees to return to work during a purported meal period such that they were not provided a
13 full 30-minute meal period. Nonetheless, in the event that a required meal period was not in fact
14 provided, Defendants never paid Plaintiff and, on information and belief, other non-exempt
15 employees the meal period premiums required by Labor Code § 226.7.

16 16. During the relevant period, Defendants' unlawful rest period policies and/or
17 practices failed to authorize and permit Plaintiff and, on information and belief, other non-exempt
18 employees to take a first and/or second rest period. This included Defendants, as a matter of
19 policy and practice, discouraging employees from taking legally compliant first and/or second
20 rest periods by pressuring employees to complete a large volume of work in each shift. Despite
21 Defendants' failure to authorize and permit all required rest periods due to their uniform and
22 unlawful practices, Defendants never provided Plaintiff and, on information and belief, other non-
23 exempt employees with an hour of pay at their regular rate for each rest period violation as
24 required by Labor Code § 226.7.

25 17. During the relevant time period, Defendants maintained a policy and/or practice
26 of failing to reimburse Plaintiff and, on information and belief, other non-exempt employees for
27 all necessary cell phone business expenses. Defendants required Plaintiff and, on information
28 and belief, other non-exempt employees to use their personal cell phones to report their hours

1 worked. Despite being required to use their personal cell phones to perform their job duties,
2 Plaintiff and, on information and belief, other non-exempt employees were never reimbursed by
3 Defendants for such necessary expenses, as mandated by Labor Code § 2802.

4 18. As a result of Defendants' failure to pay all overtime wages owed, all meal
5 premium wages owed, and all rest premium wages owed to Plaintiff, Defendants maintained
6 inaccurate payroll records and issued inaccurate wage statements to Plaintiff and, on information
7 and belief, other non-exempt employees.

8 19. As a result of Defendants' failure to pay all overtime wages, all meal premium
9 wages, and all rest premium wages owed to Plaintiff, Defendants failed to pay all wages owed
10 upon the termination of his employment to Plaintiff and, on information and belief, to other non-
11 exempt employees, as required by Labor Code §§ 201-202.

12 **CLASS ACTION ALLEGATIONS**

13 20. **Class Definitions:** Plaintiff bring this action on behalf of himself and the
14 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 15 a. Overtime Wage Class: consists of all of Defendants' current and former non-
16 exempt employees in California who worked in excess of eight hours per workday
17 and/or forty hours per workweek and were subject to Defendants' payroll policies
18 and/or practices during the four years immediately preceding the filing of this
19 Complaint through the present;
- 20 b. Meal Period Class: consists of all of Defendants' current and former non-exempt
21 employees in California who worked at least one shift in excess of 5.0 hours and
22 who did not receive an uninterrupted meal period of at least thirty minutes before
23 the start of the employee's sixth hour of work as reflected in the employee's
24 timekeeping records, during the four years immediately preceding the filing of this
25 Complaint through the present;
- 26 c. Rest Period Class: consists of all of Defendants' current and former non-exempt
27 employees in California who (1) worked at least one shift in excess of 3.5 hours
28 in which they were not authorized and permitted to take a first rest period of at
least ten minutes, during the four years immediately preceding the filing of this
Complaint through the present, and/or (2) worked at least one shift in excess of

6.0 hours in which they were not authorized and permitted to take a second rest period of at least ten minutes, during the four years immediately preceding the filing of this Complaint through the present;

- d. Reimbursement Class: consists of all of Defendants' current and former employees who were required to use their personal cell phones to perform their work duties without reimbursement during the four years immediately preceding the filing of this Complaint through the present date;
- e. Wage Statement Class: consists of all members of the Overtime Wage Class, Meal Period Class, and Rest Period Wage Class who received a wage statement during the one year immediately preceding the filing of the Complaint through the present;
- f. Waiting Time Penalty Class: consists of all formerly employed members of the Overtime Wage Class, Meal Period Class, and Rest Period Wage Class, who separated their employment from Defendants during the three years immediately preceding the filing of this lawsuit through the present date.

21. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest**: There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- a. Whether Defendants' payroll policies and/or practices resulted in the failure to properly compensate members of the Overtime Wage Class for all overtime hours worked;
- b. Whether Defendants' policies and/or practices provided legally compliant first meal periods to members of the Meal Period Class;
- c. Whether Defendants' policies and/or practices authorized and permitted legally

- compliant first and/or second rest periods to members of the Rest Period Class;
- d. Whether Defendants' policies and/or practices reimbursed necessary business expenses incurred by members of the Reimbursement Class;
- e. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226.
- f. Whether Defendants timely paid all wages, including overtime wages, meal period premium wages, rest period premium wages, and necessary business expense reimbursements, to members of the Overtime Wage Class, Meal Period Class, Rest Period Class, and Reimbursement Class upon termination of their employment pursuant to Labor Code section 201, 202.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' failure to compensate overtime wages for all hours worked over eight-hours in a workday or over forty-hours in a workweek, failure to authorize and permit legally compliant rest periods or pay premium pay in lieu thereof, failure to provide legally compliant meal periods or pay premium pay in lieu thereof, failure to reimburse necessary business expenses, failure to provide accurate itemized wage statements, and failure to timely pay all final wages upon termination of employment. Thus, common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was misclassified as an independent contractor, was deprived of all earned overtime wages, was deprived of legally compliant rest periods and meal periods, was deprived of reimbursement for necessary business expenses, was not provided legally compliant wage statements, and was deprived of payment of all final wages upon the

1 termination of his employments with Defendants.

2 25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
3 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
4 Plaintiff's attorney is ready, willing and able to fully and adequately represent the members of the
5 Classes and Plaintiff. Plaintiff's attorney has prosecuted and defended numerous wage-and-hour
6 class actions in state and federal courts in the past and is committed to vigorously prosecuting this
7 action on behalf of the members of the classes.

8 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
9 an important public interest in establishing minimum working conditions and standards in
10 California. These laws and labor standards protect the average working employee from
11 exploitation by employers who have the responsibility to follow the laws and who may seek to
12 take advantage of superior economic and bargaining power in setting onerous terms and
13 conditions of employment. The nature of this action and the format of laws available to Plaintiff
14 and members of the Classes make the class action format a particularly efficient and appropriate
15 procedure to redress the violations alleged herein. If each employee were required to file an
16 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
17 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
18 their vastly superior financial and legal resources. Moreover, requiring each member of the
19 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
20 employees who would be disinclined to file an action against their former and/or current employer
21 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
22 employment. Further, the prosecution of separate actions by the individual class members, even
23 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
24 with respect to the individual class members against Defendants herein; and which would
25 establish potentially incompatible standards of conduct for Defendants; and/or legal
26 determinations with respect to individual class members which would, as a practical matter, be
27 dispositive of the interest of the other class members not parties to adjudications or which would
28 substantially impair or impede the ability of the class members to protect their interests. Further,

the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
OVERTIME WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28. Wage Order 9 and California Labor Code §§ 510, 1194, and 1198 establish the right of employees to be paid one and one-half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday or more than 40 hours in any workweek, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek, in amounts set by state law. Labor Code §§ 1194(a) and provides that an employee who has not been paid overtime wages as required by Labor Code § 510 may recover the unpaid balance together with interest accrued thereon, attorneys' fees, and costs of suit.

29. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by causing Plaintiff and, on information and belief, other non-exempt employees to work in excess of 8 hours per workday, and/or 40 hours per workweek, but failing to compensate them at one and one-half times their regular rate of pay for all overtime hours worked.

30. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and, on information and belief, other non-exempt employees have sustained economic damages, including but not limited to unpaid overtime wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and applicable Wage Order.

31. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and,

on information and belief, other non-exempt employees in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 558.1, 510, 1194, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide Plaintiff and, on information and belief, other non-exempt employees with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Order, for the reasons set forth in the factual allegations of this Complaint.

34. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, attorneys' fees, and costs of suit pursuant to the applicable wage order, Labor Code §§ 218.5, 226.7, 512, 558.1, and Civil Code §§ 3287(b) and 3289. *See Betancourt v. OS Restaurant Services, LLC*, 83 Cal.App.5th 132 (2022).

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. Wage Order 9, and California Labor Code sections 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

37. Due to their unlawful rest period policies and/or practices, Defendants did not authorize and permit Plaintiff and, on information and belief, other non-exempt employees to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and, on information and belief, other non-exempt employees at their regular rate of pay for each violation, in accordance with California

1 Labor Code § 226.7.

2 38. The foregoing violations create an entitlement to recovery by Plaintiff and, on
3 information and belief, other non-exempt employees in a civil action for the unpaid amount of
4 rest period premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
5 costs of suit pursuant to the applicable Wage Order, California Labor Code sections 226.7, 516,
6 558.1, and Civil Code sections 3287(b) and 3289. *See Betancourt v. OS Restaurant Services,*
7 *LLC*, 83 Cal.App.5th 132 (2022).

8 **FOURTH CAUSE OF ACTION**
9 **REIMBURSEMENT VIOLATIONS**
10 **(AGAINST ALL DEFENDANTS)**

11 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 40. It was necessary for Plaintiff and members of the Reimbursement Class to use their
13 personal cell phones to perform their job duties. Although Plaintiff and members of the
14 Reimbursement Class incurred these expenses at the direction of Defendants and/or in the direct
15 discharge of their job duties, Defendants did not reasonably reimburse these employees for such
16 necessary work expenditures during the four years preceding the filing of the Complaint as alleged
17 herein.

18 41. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
19 states that "an employer shall indemnify his or her employees for all necessary expenditures or
20 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
21 his or her obedience to the directions of the employer."

22 42. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
23 states that "any contract or agreement, express or implied, made by any employee to waive the
24 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
25 employee or his personal representative of any right or remedy to which he is entitled under the
26 laws of this State."

27 43. As a proximate result of Defendants' policies and/or practices in violation of Labor
28 Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class were damaged in

1 sums, which will be shown according to proof.

2 44. Plaintiff and members of the Reimbursement Class are entitled to attorneys' fees
3 and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

4 45. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
5 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
6 Plaintiff and members of the Reimbursement Class are entitled to interest, which shall accrue
7 from the date on which they incurred the initial necessary expenditure.

8 **FIFTH CAUSE OF ACTION**
9 **WAGE STATEMENT VIOLATIONS**
10 **(AGAINST ALL DEFENDANTS)**

11 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knowingly and intentionally, as a matter of uniform policy and/or practice, failed to furnish
14 Plaintiff and, on information and belief, other non-exempt employees with accurate and complete
15 itemized wage statements that included, among other requirements, total gross and net straight
16 and overtime wages earned, meal period premium wages earned, rest period premium wages
17 earned, in violation of Labor Code § 226.

18 48. Defendants' failure to furnish Plaintiff and, on information and belief, other non-
19 exempt employees with complete and accurate itemized wage statements resulted in actual injury,
20 as said failures led to, among other things, the non-payment of all overtime wages, meal and rest
21 period premium wages, and deprived Plaintiff and, on information and belief, other non-exempt
22 employees of the information necessary to identify the discrepancies in Defendants' reported data.

23 49. Defendants' failures create an entitlement to recovery by Plaintiff and, on
24 information and belief, other non-exempt employees in a civil action for all damages and/or
25 penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable
26 attorney's fees, and costs of suit according to Labor Code §§ 226 and 226.3, 558.1.

27 **SIXTH CAUSE OF ACTION**
28 **WAITING TIME PENALTIES**
(AGAINST ALL DEFENDANTS)

1 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

2 51. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
3 an employer to pay all wages earned immediately at the time of termination of employment in the
4 event the employer discharges the employee or the employee provides at least 72 hours of notice
5 of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
6 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
7 employee's last date of employment.

8 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed to timely pay Plaintiff and, on information and belief, other non-exempt employees all final
10 wages due at the time of their separation which includes, among other things, unpaid overtime
11 wages, and unpaid meal period and rest period premium wages. Defendants' failure to pay all
12 final wages was wilful within the meaning of Labor Code § 203.

13 53. Defendants' wilful failure to timely pay Plaintiff and, on information and belief,
14 other non-exempt employees their earned wages upon separation from employment results in a
15 continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
16 Plaintiff and, on information and belief, other non-exempt employees are entitled to compensation
17 pursuant to Labor Code §§ 203, 558.1, plus reasonable attorneys' fees and costs of suit.

18 **SEVENTH CAUSE OF ACTION**
19 **UNFAIR COMPETITION**
20 **(AGAINST ALL DEFENDANTS)**

21 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 55. Defendants have engaged and continue to engage in unfair and/or unlawful
23 business practices in California in violation of California Business and Professions Code § 17200
24 et seq. by engaging in the unlawful conduct described above, including failing to pay Plaintiff all
25 overtime wages; failing to provide all legally required meal and rest periods or pay legally
26 compliant premium payments in lieu thereof; and knowingly failing to furnish accurate and
27 complete itemized wage statements in violation of Labor Code § 226; and willfully failing to pay
28 all final wages upon separation of employment in violation of Labor Code §§ 201-202.

1 56. Defendants' utilization of these unfair and/or unlawful business practices deprived
2 Plaintiff of compensation to which he is legally entitled, constitutes unfair and/or unlawful
3 competition, and provides an unfair advantage over Defendants' competitors who have been
4 and/or are currently employing workers and attempting to do so in honest compliance with
5 applicable wage and hour laws.

6 57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
7 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore
8 any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and
9 Professions Code §§ 17203 and 17208.

10 58. The acts complained of herein occurred within the last four years immediately
11 preceding the filing of the Complaint in this action.

12 59. Plaintiff was compelled to retain the services of counsel to file this court action to
13 protect his interests and to enforce important rights affecting the public interest. Plaintiff has
14 thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover
15 under Code of Civil Procedure § 1021.5.

16 **EIGHTH CAUSE OF ACTION**
17 **PRIVATE ATTORNEYS GENERAL ACT**
18 **(AGAINST ALL DEFENDANTS)**

19 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 61. Defendants have committed several Labor Code violations against Plaintiff,
21 members of the Classes, and other similarly aggrieved employees. Plaintiff, an "aggrieved
22 employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other
23 similarly aggrieved employees, bring this representative action against Defendants to recover the
24 civil penalties due to Plaintiff, the members of the Classes, other similarly aggrieved employees,
25 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
26 but not limited to \$100.00 for each initial violation and \$200 for each subsequent violation per
27 employee per pay period for the following Labor Code violations:

28 a. Misclassifying Plaintiff, the Overtime Wage Class, and other similarly aggrieved

- employees as independent contractors, in violation of Labor Code section 226.8;
- b. Failing to pay all overtime wages for all overtime hours worked to Plaintiff, the Overtime Wage Class, and other similarly aggrieved employees, in violation of Labor Code §§ 510, 1198;
 - c. Failing to provide all legally required meal periods, and to pay premium pay in lieu thereof, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512;
 - d. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 516;
 - e. Failing to reasonably reimburse all necessary business expenses incurred by Plaintiff, the Reimbursement Class, and other similarly aggrieved employees in violation of Labor Code section 2802;
 - f. Failing to furnish Plaintiff, the Wage Statement Class, and other similarly aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
 - g. Failing to timely pay Plaintiff, the Waiting Time Penalty Class, and other similarly aggrieved employees with all final wages at the end of their employments, in violation of Labor Code §§ 201-202;
 - h. Failing to pay Plaintiff, and other similarly aggrieved non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
 - i. Failing to maintain accurate records on behalf of Plaintiff and other similarly aggrieved employees in violation of Labor Code § 1174.

62. On or about August 13, 2024, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in

1 this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor
2 Code section 2698 *et seq.* Plaintiff also submitted filing fees of seventy-five (\$75.00) to the
3 LWDA in accordance with Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed
4 from the date of Plaintiff's notice to the LWDA, and thus Plaintiff has exhausted her
5 administrative remedies, thereby allowing Plaintiff to commence a civil action against Defendant
6 pursuant to Labor Code section 2699.

7 63. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and the interests of other similarly aggrieved employees, and to assess and
9 collect the civil penalties owed by Defendant. Plaintiff has thereby incurred attorneys' fees and
10 costs, which he is entitled to receive under California Labor Code § 2699.

11 **PRAYER**

12 **WHEREFORE,** Plaintiff prays for judgment for himself and for all others on whose
13 behalf this suit is brought against Defendants, as follows:

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as representatives of the Classes;
- 16 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 17 4. Upon the First Cause of Action, for payment of unpaid overtime wages, and
18 penalties according to proof pursuant to Labor Code §§ 510, 558.1, 1194, and
19 1198;
- 20 5. Upon the Second Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and
22 558.1;
- 23 6. Upon the Third Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and
25 558.1;
- 26 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 28 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §§

226, and 558.1;

9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§ 201-203, and 558.1;

10. Upon the Seventh Cause of Action, for restitution to Plaintiff of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 et seq.;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and \$100 for each subsequent violation of Labor Code § 558 per employee per pay period plus an amount sufficient to recover the unpaid wages and; (2) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code, including §§ 218.5, 226, 1194 et seq.; and Code of Civil Procedure § 1021.5; and

14. For such other and further relief the Court may deem just and proper.

Dated: October 21, 2024

SANI LAW, APC

By:



Sam Sani
Attorney for Plaintiff
ROBERTO ESQUEDA

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Dated: October 21, 2024

By:



Sam Sani
Attorney for Plaintiff
ROBERTO ESQUEDA