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Superior Court of California,

County of Placer

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By: Stephen E Pegg

Deputy Clerk

Attorneys for Plaintiff, ALEJANDRO HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

ALEJANDRO HERNANDEZ,

Plaintiff,

vs.

SELECT TECH INC.; BLAKE ASHLEY
ROATH; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: S-CV-0054897

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **7) FAILURE TO GIVE REST BREAKS;**

) **8) FAILURE TO GIVE MEAL BREAKS;**

) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**

) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **11) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**

) **12) FAILURE TO PROVIDE PAY**
) **RECORDS;**

) **13) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, ALEJANDRO HERNANDEZ (hereinafter “Plaintiff”), and complains and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Placer in this judicial district because Defendants SELECT TECH INC.; BLAKE ASHLEY ROATH, and DOES 1 to 25, inclusive, (collectively “Defendant(s)” or “SELECT TECH”) do business in the County of Placer, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SELECT TECH INC. was and is a California corporation which employed Plaintiff.

4. Defendant BLAKE ASHLEY ROATH is a citizen of California based on Plaintiff’s information and belief.

5. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

6. Plaintiff is informed and believes and thereon alleges that BLAKE ASHLEY ROATH is a natural person and an owner, director, officer, and/or managing agent of Defendant SELECT TECH INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the aggrieved employees (as defined below). Therefore, she is liable to Plaintiff and the aggrieved employees for her violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802, and the Wage Order (no. 4/16) pursuant to Labor Code section 558.1.

7. The “aggrieved employees” are all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant

1 time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private
2 Attorneys General Act of 2004 (“PAGA”).

3 8. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
4 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
5 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
6 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
7 for the conduct alleged herein. Upon discovering the true names and capacities of these
8 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
9 capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint,
10 Plaintiff is informed, and on the basis of that information and belief, alleges that at all times
11 herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged,
12 were acting within the course, scope, and under the authority of their agency, employment, or
13 representative capacity, with the consent of his/her codefendants.

14 **GENERAL ALLEGATIONS**

15 9. Plaintiff started working for SELECT TECH on or around June 2024 as laborer doing
16 demolitions or other construction tasks. Plaintiff was classified as an hourly, non-exempt
17 employee. Plaintiff generally worked Monday through Friday and was scheduled to work over
18 an 8-hour shift. Plaintiff is still currently employed for SELECT TECH.

19 10. It is Plaintiff’s position that SELECT TECH has violated the following Labor Code
20 Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-
21 exempt, hourly employees who worked for SELECT TECH at their various locations in the State
22 of California during the relevant PAGA period.

23 11. SELECT TECH violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
24 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
25 including the statutory minimum wage for all hours worked and for “off the clock” work. This
26 is so because SELECT TECH had a company policy wherein they would disproportionately
27 round down the number of hours worked for Plaintiff and others, resulting in “time shaving” and
28 further resulting in aggrieved employees not being paid for all hours worked. Moreover,
SELECT TECH failed to provide its employees, including Plaintiff and others, with proper and
accurate reporting time pay. Furthermore, Plaintiff and others were not actually paid for travel
time in driving to different locations for work. In addition, the foreman/supervisors controlled

1 the clock in and clock out entries (by manually handwriting in the hours) and rounded those
2 hours resulting in inaccurate pay. Plaintiff and others did not know what the foreman was writing
3 on any actual timesheet for clock in and clock out times as well as any meal break times.

4 12. Furthermore, SELECT TECH was subject to the prevailing wage laws of the State of
5 California pursuant to Labor Code § 1771, regarding work undertaken on public construction
6 projects. Under Labor Code § 1771, the only legal wage which may be paid to workers on public
7 works projects is the prevailing wage. SELECT TECH compensated Plaintiff and other similarly
8 situated aggrieved employees for their labor on public improvement, or public works
9 construction projects, at a rate of pay below the general prevailing rate of per diem wages for
10 work of a similar character in the locality in which the public work is performed, and less than
11 the general prevailing rate of per diem wages for holiday and overtime work.

12 13. SELECT TECH was subject to the prevailing wage laws of the State of California
13 pursuant to Labor Code § 1774, regarding work undertaken on public construction projects.
14 SELECT TECH violated Labor Code § 1774, because it paid its employees, including Plaintiff,
15 less than the specific prevailing rates of wages to all workmen employed in the execution of the
16 contract of the projects. Plaintiff and others similarly situated worked on public works projects,
17 especially for the State of California. In fact, the latest job Plaintiff was on was supposed to pay
18 him between \$50 and \$70 per hour but Plaintiff was only paid \$27-\$35 per hour in contravention
19 of California law. SELECT TECH was submitting timecards to the State of California stating
20 that employees such as Plaintiff and others were receiving the prevailing wage, including
21 overtime compensation based on the prevailing wage when that simply was not in line with
22 reality.

23 14. Due to the above “off the clock” violations and failure to pay the correct prevailing
24 wage rate, SELECT TECH also violated Labor Code §510 because it failed to pay Plaintiff and
25 other aggrieved employees overtime compensation or the correct amount of overtime
26 compensation (based on the prevailing wage rate), even though they worked more than 8 hours
27 per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s
28 and other aggrieved employees’ actual work hours entitled them to overtime compensation,
however, SELECT TECH did not compensate its hourly, non-exempt employees with the correct
amount of overtime due to the “off the clock” work and time shaving as described above and
due to not paying Plaintiff and others the correct prevailing wage rates. Furthermore, SELECT
TECH failed to include bonuses/incentive payments/shift differentials in calculating Plaintiff’s

1 and other employees' regular rate of pay for use in deciphering the correct overtime rate of pay.
2 Additionally, the incentive, shift differential, and bonus payments were also not factored into
3 employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.
Loews case.

4 15. SELECT TECH also violated Labor Code § 226.7 and the appropriate Industrial
5 Welfare Commission Wage Order no. 4/16 because it failed to provide Plaintiff and other
6 similarly situated aggrieved employees with 10-minute rest periods for every four hours of work,
7 or majority portion thereof, throughout their employment. SELECT TECH did not completely
8 relieve Plaintiff and others of all duty during said rest periods. SELECT TECH did not pay to
9 Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each
10 workday that one or more statutory rest periods was not provided. Plaintiff did not always
11 multiple timely, uninterrupted rest breaks throughout his employment. Rest breaks were not
12 consistently enforced. As such, the culture as well as the policies and procedures of SELECT
13 TECH did not lend itself to the employees receiving consistent statutory rest breaks wherein they
14 were relieved of all work duties. The environment at SELECT TECH was not conducive to
receiving statutory rest breaks under California law and timely, statutory rest breaks were not
authorized or enforced.

15 16. SELECT TECH violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
16 Welfare Commission Wage Order no. 4/16 because it failed to provide hourly, non-exempt
17 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
18 for every five (5) hours of work throughout their employment. SELECT TECH did not
19 completely relieve Plaintiff and other employees of all duty during said meal periods. SELECT
20 TECH did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay
21 at their regular rate of compensation for each workday that one or more statutory meal periods
22 was not provided. Like the rest breaks, receiving a consistent thirty-minute uninterrupted and
23 timely meal break was not strictly enforced by SELECT TECH. Furthermore, Plaintiff and others
24 did not himself clock in and out for meal breaks and so SELECT TECH would not have accurate
25 records showing that any employee received a timely, uninterrupted meal period because the
26 supervisor would choose what hours to put for the start and end time of the breaks as well as
27 how long the "break" lasted. Consequently, it was the normal practice and custom of SELECT
28 TECH not to consistently authorize, permit, and enforce timely statutory meal periods. If
SELECT TECH had Plaintiff sign a meal period waiver, it would not be valid and enforceable

1 since Plaintiff and others generally worked more than a 5-hour shift. Furthermore, under
2 California law, employees must make an affirmative decision every day regarding whether to
3 waive their meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to forego a meal
4 period may not, therefore, be based on a specific requirement of the employer or on a policy or
5 practice which could reasonably be perceived to be a condition of employment. Therefore,
6 blanket “waivers” of meal periods ...whether written or oral, will not be considered valid.”). If
7 SELECT TECH had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to
8 work through the meal periods, it would be invalid and unenforceable because the nature of
9 Plaintiff’s job does not and did not prevent him from taking a meal period and the company
10 could have hired “breakers” to relieve Plaintiff of his job duties so that he can actually take a
11 timely, uninterrupted meal period. Moreover, any such “on duty” meal period agreement did not
12 allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others
13 did not always receive statutory, timely meal periods during their employment. To the extent
14 that SELECT TECH argues that employees receive meal break premium pay for missed meal
15 periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties
16 are for the violations themselves, irrespective of whether an employee received the premium
17 payment for a missed, short, or interrupted meal period. In Kirby v. Immoos Fire Protection,
18 Inc., the Court stated, “section 226.7 does not give employers a lawful choice between providing
19 either meal and rest breaks or an additional hour of pay.” See Kirby v. Immoos Fire Protection,
20 Inc., (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not
21 excuse the violation; the employer has still committed a violation even if the remedy for the
22 violation has been paid. See Wert v. U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302
23 at *4). As such, the work environment and culture at SELECT TECH was not conducive to
24 receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or
25 rest break premiums paid were not compensated at the weighted average regular rate, inclusive
26 of bonuses and/or incentive payments as well as overtime compensation.

27 17. Furthermore, during the relevant time period, and due to the above labor code
28 violations, SELECT TECH failed to pay Plaintiff and other similarly situated aggrieved
employees all wages due to them within any time period specified by California Labor Code
section 204. Since Plaintiff was not compensated for his “off the clock” work and since Plaintiff
did not receive the proper wage rate including the prevailing wage and concomitant overtime,
and did not receive meal and rest break premiums, Plaintiff would still be owed wages pursuant

1 to Labor Code Section 204. SELECT TECH was also in violation of California Labor Code
2 section 226(a) by failing to include pertinent information on the wage statements provided to
3 Plaintiff and others, including but not limited to, the correct hourly rate, all hours worked,
4 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium
5 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
6 all employee identifying information, the correct and complete name and address of the legal
7 employer, and reimbursement for business expenses, among others. Furthermore, the paystubs
8 would have facial violations on them due to not including all hours worked at the correct
9 prevailing wage rate. As such, SELECT TECH did not provide Plaintiff and other similarly
10 situated aggrieved employees with complete, accurate itemized wage statements.

11 18. During the relevant time period, SELECT TECH also failed to keep accurate and
12 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
13 and others pursuant to California Labor Code sections 1174(d).

14 19. SELECT TECH also violated Labor Code § 203 because it willfully failed to pay other
15 similarly situated aggrieved employees earned and due wages upon separation of employment,
16 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
17 but unpaid wages include compensation for all hours worked, including minimum wages,
18 overtime compensation, and premium pay for missed meal and rest breaks.

19 20. During the relevant time period, Plaintiff and other aggrieved employees incurred
20 necessary, business-related expenses and costs that were not reimbursed by SELECT TECH.
21 These costs include, but are not limited to, use of personal cell phones for work purposes,
22 especially as it related to scheduling. Moreover, Plaintiff was obligated to buy steel toe shoes by
23 the employer and was not reimbursed. Accordingly, SELECT TECH was in violation of
24 California Labor Code sections 2800 and 2802.

25 21. Furthermore, SELECT TECH did not provide proper and correct/accurate sick pay
26 (inclusive of all bonuses/shift differentials/incentive payments) to Plaintiff and others that was
27 also delineated on employee pay stubs and also failed to provide proper sick leave in violation
28 of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break
facilities for Plaintiff and other employees pursuant to Wage Order no. 16-2001. Moreover, there
was no drinking water available at times for Plaintiff and other employees and no sinks, water,
or soap for Plaintiff and others to wash their hands.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

3 **(California Industrial Welfare Commission Order 4/16-2001, California Code of**
4 **Regulations Title 8 Section 11040/11160, and California Labor Code Section 1198)**

5 **(Plaintiff against all named defendants and all DOE defendants)**

6 22. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

7 23. At all times relevant herein, Defendants were required to compensate its employees for
8 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
9 to Industrial Welfare Commission Order 4/16-2001, California Code of Regulations, Title 8,
10 Section 11040/11160.

11 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
12 Plaintiff for all hours worked.

13 25. Under the aforementioned wage order and regulations, Plaintiff is to recover
14 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
15 the filing of this Complaint.

16 26. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an
17 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
18 Court.

19 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
20 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
21 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
22 attorney's fees and costs of suit.

23 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
25 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

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2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME**

4 **(California Industrial Welfare Commission Order 4/16-2001, California Code of**
5 **Regulations Title 8 Section 11040/11160)**

6 **(Plaintiff against all named Defendants and all DOE defendants)**

7 36. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

8 37. Pursuant to Industrial Welfare Commission Order No. 4/16-2001, California Code of
9 Regulations, Title 8, Section 11040/11160, for the period of Plaintiff's employment, Defendants
10 were required to compensate Plaintiff for all overtime, which is calculated at one and one-half
11 (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40)
12 hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve
13 (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day
14 in a week.

15 38. Plaintiff was a non-exempt employee entitled to the protections of the California
16 Industrial Welfare Commission Order No. 4/16-2001, California Code of Regulations, Title 8,
17 Section 11040/11160.

18 39. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
19 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

20 40. Plaintiff was entitled to the above overtime premiums.

21 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
22 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
23 regular rate of pay for hours worked past twelve (12) in a day.

24 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
25 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

26 43. Plaintiff worked at least one pay period in which he was not properly paid overtime
27 within the three (3) years prior to the initiation of this lawsuit.

28 44. Defendants know or should know the actual dates of overtime worked, the amount of
overtime worked, and the amount of unpaid overtime due.

1 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount
2 according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

3 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
4 Regulations, Title 8, Sections 11040/11160, Plaintiff is entitled to recover damages for the
5 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
6 reasonable attorney's fees and costs of suit.

7 47. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
9 trial.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(California Labor Code Section 226)**

13 **(Plaintiff against all named Defendants and all DOE defendants)**

14 48. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

15 49. Pursuant to California Labor Code Section 226, every employer must furnish each
16 employee an itemized statement of wages and deductions at the time of payment of wages.

17 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
18 accurately reflected all information required by Labor Code Section 226, including but not
19 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the
20 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,
21 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
22 accordance with California Labor Code Section 226(a).

23 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
24 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
25 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
26 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
27 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
28 the 1-year period immediately preceding the date this lawsuit was filed.

52. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained

1 damages, including loss of earnings, in an amount to be established at trial. As a further direct
2 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
3 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
4 pursuant to statute.

5 53. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

9 **(California Labor Code Section 204)**

10 **(Plaintiff against all named Defendants and all DOE defendants)**

11 54. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

12 55. California Labor Code Section 204 establishes the fundamental right of all employees
13 in the State of California to be paid wages in a timely fashion for their work.

14 56. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
15 full amount of all owed wages when due as required by California Labor Code Section 204.

16 57. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
17 informed, believes, and thereon alleges, that all times relevant during the liability period,
18 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
19 including overtime hours and the minimum wage along with premiums for missed meal breaks
20 and rest breaks.

21 58. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
22 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
23 amount of unpaid wages is not presently known to Plaintiff but can be determined directly from
24 Defendants' records or indirectly based on information from Defendants' records.

25 59. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named Defendants and all DOE defendants)

60. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

61. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

62. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

63. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

64. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

66. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO GIVE REST BREAKS**

3 **(Plaintiff against all named Defendants and all DOE defendants)**

4 68. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

5 69. In relevant part, Wage Order 4-2001/16-2001, Sections 12 and 11 respectively states:

6 Rest Periods:

7 (A) Every employer shall authorize and permit all employees to take rest periods,
8 which insofar as practicable shall be in the middle of each work period. The
9 authorized rest period time shall be based on the total hours worked daily at the
10 rate often (10) minutes net rest time per four (4) hours or major fraction thereof.
11 However, a rest period need not be authorized for employees whose total daily
12 work time is less than three and one-half (3 1/2) hours. Authorized rest period
13 time shall be counted as hours worked for which there shall be no deduction from
14 wages.

15 (B) If an employer fails to provide an employee a rest period in accordance with the
16 applicable provisions of this Order, the employer shall pay the employee one (1) hour
17 of pay at the employee's regular rate of compensation for each work day that the rest
18 period is not provided.

19 70. In addition, Labor Code Section 226.7 states

20 (b) An employer shall not require an employee to work during a meal
21 or rest or recovery period mandated pursuant to an applicable statute, or
22 applicable regulation, standard, or order of the Industrial Welfare
23 Commission, the Occupational Safety and Health Standards Board, or
24 the Division of Occupational Safety and Health.

25 (c) If an employer fails to provide an employee a meal or rest or
26 recovery period in accordance with a state law, including, but not limited
27 to, an applicable statute or applicable regulation, standard, or order of the
28 Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health, the
employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal
or rest or recovery period is not provided.

71. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
rest break after every four (4) hours of work or major fraction thereof, as required by California
law.

72. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
regulations, and wage orders alleged in this cause of action along with any allowable interest,

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the
2 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

3 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
4 fees as well as interest under Labor Code section 218.6.

5 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO GIVE MEAL BREAKS**

10 **(Plaintiff against all named Defendants and all DOE defendants)**

11 74. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

12 75. California Labor Code section 512(a) requires that employees be given a 30-minute
13 uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break
14 after ten (10) hours of work.

15 76. California Labor Code section 226.7 states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of the
17 Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal
18 period in accordance with an applicable order of the Industrial Welfare Commission, the
19 employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
20 of compensation for each workday that the meal period is not provided;

21 77. In relevant part, Wage Order 4-2001/16-2001, Section 11 and 10 respectively, state:

22 **Meal Periods:**

23 (A) No employer shall employ any person for a work period of more
24 than five (5) hours without a meal period of not less than 30
25 minutes, except that when a work period of not more than six (6)
26 hours will complete the day's work the meal period may be
27 waived by mutual consent of the employer and the employee...

28 (B) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that
the meal period is not provided. (*Wage Order 16-2001 section
10(F)*)

1 78. During the relevant time period, Plaintiff alleges that he was not authorized and permitted
2 to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not
3 authorized and permitted to take a second relieved meal break after ten (10) hours of work, as
4 required by California law. California Labor Code section 512(a) and California Industrial
5 Welfare Commission Order No. 4/16, as codified under California Code of Regulations Sections
6 11040/11160 et. seq. requires that employees receive uninterrupted meal periods every five (5)
7 hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein
8 employee is relieved of all work duty. California Labor Code section 226.7 provides that
9 employers may not require their employees to work through their meal periods. California Labor
10 Code section 226.7 and California Code of Regulations section 11040/11160 requires that if the
11 employer fails to provide the employee with an uninterrupted meal period, the employer must
12 pay the employee one (1) hour of pay for each work day that the meal period is not given.

13 79. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the
16 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

17 80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
18 fees as well as interest under Labor Code section 218.6.

19 81. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

23 **(Plaintiff against all named Defendants and DOE Defendants)**

24 82. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

25 83. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."

28 84. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of

1 completing his job duties, which were not reimbursed by Defendants. These costs include, but
2 are not limited to, use of personal cell phones for work purposes, especially as it related to
3 scheduling. Moreover, Plaintiff was obligated to buy steel toe shoes by the employer and was
4 not reimbursed. As such, Plaintiff is entitled to reimbursement for these necessary expenditures,
5 plus interest and attorney's fees and costs, under Labor Code section 2802.

6 **TENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
9 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174,**
10 **1174.5, 1194, 1197, 1198, 2802)**

11 **(Plaintiff against all named Defendants and all DOE defendants)**

12 85. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

13 86. Pursuant to law, by letter dated August 1, 2024 Plaintiff provided the required written
14 notice to the LWDA and Defendants of the specific violations of the California Labor Code that
15 Defendants and DOE defendants have violated and continue to violate.

16 87. Pursuant to California Labor code section 2699.3, no response was received from the
17 LWDA within 65 days of the postmark date of the above-alleged letter.

18 88. Plaintiff therefore has exhausted all administrative remedies required of him under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
20 cause of action and pursue penalties in a representative action for Defendants' violations of the
21 Labor Code.

22 89. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
23 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
24 departments, divisions, commissions, boards, agencies, or employees for violation of the code
25 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
26 on behalf of himself or herself and other current or former employees pursuant to the procedures
27 specified in California Labor Code section 2699.3.

28 90. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
violator and had one or more of the alleged violations committed against him, and therefore is

properly suited to represent the interests of other current and former hourly, non-exempt employees who worked for AKD at any of their California locations during the relevant PAGA Period.

91. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

92. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

93. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

94. California Labor Code section 558 establishes a civil penalty as follows: Any employer or other person action on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...

95. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved employees in this specific cause of action under the Private Attorneys General Act.

96. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage

1 Order Provisions (no. 16) violated based on the facts alleged in this Complaint.

2 97. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
3 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
4 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
5 limits of this Court.

6 **ELEVENTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE PERSONNEL RECORDS**

8 **(Plaintiff against all named Defendants and all DOE Defendants)**

9 98. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

10 99. Labor Code section 1198.5 dictates "every current and former employee, or his
11 or her representative, has the right to inspect and receive a copy of the personnel records that
12 the employer maintains relating to the employee's performance or to any grievance concerning
13 the employee."

14 100. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
15 employer shall make the contents of those personnel records available for inspection to the
16 current or former employee, or his or her representative, at reasonable intervals and at reasonable
17 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
18 personnel records when requested by Plaintiff via letters on August 1, 2024, as required by law.
19 Plaintiff requested his personnel records in accordance with California Labor Code section
20 1198.5(k) on August 1, 2024, via U.S. certified mail, return receipt requested.

21 101. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
22 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
23 suffered and continues to suffer substantial losses related to Defendants' failure to provide
24 personnel records.

25 102. Plaintiff seeks all available remedies for Defendants' violations including, but
26 not limited penalties, and costs to the extent permitted by law and according to proof at trial.
27 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
28 amount of \$750.00, along with costs and attorney's fees.

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1 **TWELFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE PAY RECORDS**

3 **(Plaintiff against all named Defendants and all DOE Defendants)**

4 103. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

5 104. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
6 current and former employees the right to inspect or copy records pertaining to their
7 employment, upon reasonable request to the employer...”

8 105. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an
9 employer who receives a written or oral request to inspect or copy records pursuant to
10 subdivision (b) pertaining to a current or former employee shall comply with the request as
11 soon as practicable, but no later than 21 calendar days from the date of the request.” On
12 information and belief, Defendants intentionally failed to provide Plaintiff with pay records
13 when requested by Plaintiff via certified letter, return receipt requested, on August 1, 2024,
14 and as required by law. Plaintiff requested his pay records in accordance with California
15 Labor Code section 226 on August 1, 2024, via certified mail. Defendants failed to provide
16 Plaintiff with an opportunity to inspect or copy his pay records within 21 days.

17 106. As a direct result of Defendants’ violations alleged herein, Plaintiff has
18 suffered and continues to suffer substantial losses related to Defendants’ failure to provide pay
19 records.

20 107. Pursuant to Labor Code section 226, Plaintiff prays for judgment against
21 Defendants in the amount of \$750.00, along with costs and attorney’s fees. Plaintiff seeks all
22 available remedies for Defendants’ violations including, but not limited penalties, and costs to
23 the extent permitted by law and according to proof at trial.

24 **THIRTEENTH CAUSE OF ACTION**

25 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

26 **(California Business and Professions Code Section 17200)**

27 **(Plaintiff against SELECT TECH INC. and all DOE defendants)**

28 108. Plaintiff incorporates by reference each and every paragraph of this Complaint
as if fully alleged herein.

1 109. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
2 constitutes unfair and unlawful business practices under California Business and Professions
3 Code Section 17200, et seq.

4 110. Defendant's violations of the California labor laws and the Labor Code
5 constitutes a business practice because it was done repeatedly over a significant period of time
6 in a systematic manner that was detrimental to Plaintiff and others.

7 111. For the four years preceding the filing of this action, Plaintiff has suffered
8 damages and request damages and/or restitution of all monies and profits to be disgorged from
9 corporate defendant SELECT TECH INC. in an amount according to proof at
10 time of trial, but in excess of the jurisdiction of this Court.

11 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
12 follows:

- 13 1. For general damages according to proof;
- 14 2. For special and consequential damages to the extent allowed by law;
- 15 3. For an award of punitive damages against Defendants according to proof;
- 16 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
17 at trial;
- 18 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
19 subject to proof at trial;
- 20 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
21 proof at trial;
- 22 7. For restitution and disgorgement for all unfair business practices by Defendant SELECT
23 TECH INC. against Plaintiff in an amount subject to proof at trial;
- 24 8. For an order enjoining Defendant SELECT TECH INC. from further unfair and
25 unlawful business practices in violation of Business and Professions Code Sections
26 17200, et seq.;
- 27 9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
28 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major

- fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
13. For the imposition of civil penalties and/or statutory penalties;
14. For all interest as allowed by law;
15. For all costs and disbursements incurred in this suit;
16. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5, and/or other applicable laws; and
17. For such other and further relief as this Court may deem proper.

DATED: March 25, 2025

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff ALEJANDRO
HERNANDEZ

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: March 25, 2025

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff ALEJANDRO
HERNANDEZ