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ERIC ALLEN PHILLIPS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF HUMBOLDT**

ERIC ALLEN PHILLIPS, an individual,
on his own behalf and on behalf of all
others similarly situated,

Plaintiffs,

vs.

C & K MARKET, INC., DBA SHOP
SMART and RAY'S FOOD PLACE, an
Oregon corporation; and DOES 1
through 100, inclusive,

Defendants.

FILED

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

CASE NO.: CV 2401836

CLASS ACTION COMPLAINT FOR:

1. **FAILURE TO PAY OVERTIME** (Cal. *Labor Code* §§ 510, 558, 1194, 1194.3, 1198; Wage Order No. 7);
2. **FAILURE TO PAY MINIMUM WAGES** (Cal. *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119; Wage Order No. 7);
3. **FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS** (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 7);
4. **FAILURE TO PROVIDE REST PERIODS** (Cal. *Labor Code* § 226.7; IWC Wage Order No. 7);
5. **FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** (Cal. *Labor Code* §226; Wage Order No. 7);
6. **FAILURE TO PAY WAGES DUE UPON TERMINATION** (Cal. *Labor Code* §§201-203; Wage Order No. 7);
7. **FAILURE TO REIMBURSE BUSINESS EXPENSES** (Cal. *Labor Code* §2802);
8. **REPORTING TIME PAY** (Wage Order No. 7);
9. **UNLAWFUL DEDUCTION OF WAGES** (Cal. *Labor Code* §221);
10. **FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE** (Cal. *Labor Code* §§201-204, 218, 218.5, 233, 245, 246 et seq.);

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- 11. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor
Code* §1198.5); and
12. UNFAIR COMPETITION (Cal. *Bus. & Prof.
Code* §§17200 *et seq.*).**

DEMAND FOR A JURY TRIAL

10 All allegations in this Complaint are based upon information and belief except for those
11 allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has ev-
12 identitary support or is likely to have evidentiary support after a reasonable opportunity for fur-
13 ther investigation and discovery.

14 ERIC ALLEN PHILLIPS (“Plaintiff”) alleges the following:

15 1. This is a class action brought under California law by an individual who was
16 employed by C & K Market, Inc. dba Shop Smart and Ray’s Food Place (“C & K” or
17 “Defendant”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this
18 action on behalf of himself and others similarly situated to recover wages from Defendant due
19 to Defendant’s systematic failure to: pay overtime wages, minimum wages, provide meal and
20 rest breaks (or pay the statutory compensation due), issue accurate wage statements, pay all
21 wages upon termination, reimburse business expenses, pay reporting time pay, sick pay and
22 unlawful deduction of wages.

23 2. Plaintiffs have worked as Deli Clerks and other employees for Defendant in
24 California. While working, Plaintiffs have been forced to endure stressful and illegal workplace
25 conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

26 3. Plaintiff, like his co-workers whom Defendant also employed during the
27 applicable limitations period, spend their workdays as employment as Deli Clerks and other
28 employees, under illegal and highly regimented circumstances. That regimen results from
Defendant’s insistence to strictly monitor and curtail labor costs, which Defendant

1 accomplishes by not paying for all labor costs, failing to pay overtime wages due to off the
2 clock work, failing to pay minimum wages, failing to provide meal and rest breaks (or pay the
3 statutory compensation due); failing to issue accurate wage statements, failing to pay all wages
4 on termination, failing to reimburse business expenses, failing to pay reporting time pay,
5 unlawful deduction of wages, sick pay and by using other unlawful stratagems to ensure that
6 labor costs remain artificially low.

7 4. Plaintiff brings this class action to recover, among other things, wages and
8 penalties from unpaid wages earned and due, including but not limited to, overtime wages,
9 minimum wages, premium pay for failure to afford proper meal/rest breaks, wages due to
10 discharged or quitting employees, penalties for failure to provide accurate itemized wage
11 statements, reimbursement of business expenses, reporting time pay, wages that were
12 unlawfully deducted, sick pay and interest, attorneys' fees, costs, and expenses.

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

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

21 7. Pursuant to the California Labor Code, on or about September 27, 2024,
22 Plaintiff filed a notice with Labor and Workforce Development Agency (LWDA) of his intent
23 to pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
24 Plaintiff reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint
25 to add a cause of action pursuant to PAGA under Labor Code §§2699 *et seq.*

26 JURISDICTION AND VENUE

27 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
28

§410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Eric Allen Phillips brings this Complaint on his own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Humboldt and because Defendant owned and operated their business in the County of Humboldt.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Redway, California;
- (b) Employed as an hourly employee for Defendant in Redway, 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 in violation of *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 the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) When terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;
- (i) Was not reimbursed for business expenses as required by *Labor Code* §2802;
- (j) Was not paid reporting time pay in violation of the Applicable IWC Wage Order;

- 1 (k) Had his wages unlawfully deducted by Defendant in violation of *Labor*
2 *Code* §221;
3 (l) Was not paid sick leave wages when due in violation of Cal. *Labor Code*
4 §§201-204, 218, 218.5, 233, 245, 246 et seq.; and
5 (m) Was not provided his personnel records. Each of these was a violation of
6 the *Labor Code*.

7 **DEFENDANT**

8 11. Plaintiff is informed and believes, and based on that information and belief,
9 alleges, Defendant C & K is, and at all times mentioned herein was:

- 10 (a) A California corporation, with a principal place of business at 850 Ohare
11 Pkwy., Ste. 100, Medford, Oregon 97504. Defendant has been
12 authorized to do business and has been doing business in the County of
13 Humboldt;
14 (b) The former employer of Plaintiff and the current and former employer of
15 the putative Class members;
16 (c) Paid Plaintiff and all Class Members on an hourly basis;
17 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
18 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
19 (f) Failed to provide Plaintiff and all putative Class members with meal and
20 rest periods;
21 (g) Failed to provide Plaintiff and all putative Class Members with accurate
22 itemized wage statements;
23 (h) Failed to issue final paychecks timely to Plaintiff and all putative Class
24 Members;
25 (i) Failed to reimburse business expenses to Plaintiff and all putative Class
26 Members;
27 (j) Failed to pay reporting time pay to Plaintiff and all putative Class
28 Members;

- 1 (k) Unlawfully deducted wages;
2 (l) Failed to pay sick pay wages; and
3 (m) Failed to provide Plaintiff with his requested personnel records. Each of
4 these was a violation of the *Labor Code*.

5 12. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
7 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
8 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
9 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

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

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

22 15. Plaintiff is informed and believes, and based on that information and belief
23 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
24 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
25 the other Defendants and that each Defendant was acting within the course and scope of his,
26 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
27 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
28 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 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 period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

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

1 **B. Maintenance of the Action**

2 19. Plaintiff brings this action individually and on behalf of himself and as
3 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
4 and 17204 and *Code of Civil Procedure* § 382.
5

6 **C. The Class Requisites**

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

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

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

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

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

- 10 (a) The questions of law and fact common to the Class predominate over any
11 question affecting only individual members;
- 12 (b) A class action is superior to any other available method for fairly and
13 efficiently adjudicating the claims of the Class;
- 14 (c) The Class members are so numerous that it is impractical to bring all of
15 them before the Court;
- 16 (d) Plaintiff and other Class members will not be able to obtain effective and
17 economic legal redress unless the action is maintained as a class action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the statutory violations, and in obtaining adequate
20 compensation for the damages and injuries for which Defendant is
21 responsible in an amount sufficient to adequately compensate the Class
22 members;
- 23 (f) Without Class certification, the prosecution of separate actions by
24 individual Class members would create a risk of:
- 25 i. Inconsistent or varying adjudications for individual Class members
26 that would establish incompatible standards of conduct for
27 Defendant; and/or,
28

ii. Adjudication for individual Class members that would, as a practical matter, dispose of other non-party members' interests, or that would substantially impair or impede the non-parties' ability to protect their interests, by, for example, potentially exhausting the funds available from Defendant, and

(g) Defendant has acted or refused to act on grounds generally applicable to the Classes, making final injunctive relief appropriate for the Class, as a whole.

24. Plaintiff contemplates eventually issuing notice to the proposed Class Members that would set forth the subject and nature of the action. The Defendant's own business records may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any further notices may be required, Plaintiff would contemplate using additional media and/or mailing.

GENERAL ALLEGATIONS

25. At all times material hereto, Defendant has been, and is a corporation that owns grocery stores.

26. Plaintiff and members of the Class were employed as Deli Clerks and other non-exempt employees in California at various times during the Class Period.

THE CONDUCT

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

28. Starting on or about November 7, 2022 and continuing to April 1, 2024, Defendant employed Plaintiff on an hourly basis as a Deli Clerk at its grocery store in Redway, California.

29. While employed by Defendant as a Deli Clerk, Plaintiff was paid between \$16.00 per hour.

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1 30. The employment by Defendant of the Class Members, and each them, is
2 governed by Industrial Welfare Commission Wage Order 7, which covers those persons
3 employed in the mercantile industries.

4 **OFF-THE-CLOCK WORK**

5 31. Employers must compensate non-exempt employees for “off-the-clock” work
6 (before punching in or after punching out on a time clock) if the employers knew or should
7 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
8 (2000) 22 Cal. 4th 575, 585.

9 32. Defendant required Plaintiff and the Class to regularly perform compensable
10 tasks pre and post-shift off-the-clock for which they did not receive any compensation.
11 Specifically, Plaintiff and Class members were required to wait in line for approximately 1
12 minute for time clocks to become available to clock in/out for their shifts and also for the
13 start/end of meal breaks. Further, at times Plaintiff and Class members spent up to 5 minutes
14 helping customers prior to clocking in/out for their shifts. Additionally, Plaintiff and Class
15 members were required to use their personal cell phones off the clock for work-related
16 purposes such as group chats, messages and calls from their managers for about 5 minutes per
17 day. As a result, and because they improperly treated such pre- and post-shift activities as non-
18 compensable, Defendant failed to compensate Plaintiff and the Class for such time.

19 **REGULAR RATE OF PAY**

20 33. California law uses the terms "compensation" and "pay" interchangeably and
21 requires that all applicable remuneration, including but not limited to, commissions, and/or
22 non-discretionary shift differentials/shift premiums and/or extra benefits, etc., be included
23 when calculating an employee's regular rate of pay.

24 34. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
25 should have known that Plaintiff and Class members were entitled to be paid at a regular rate
26 of pay, and corresponding overtime rate of pay, that included as eligible income all income
27 derived from all forms of compensation.

1 35. Defendant failed to properly pay and calculate overtime wages and sick pay due
2 to excluding shift differentials/shift premiums and/or extra benefits from regular rate of pay
3 calculations. Such shift differentials/shift premiums are required under California law to be
4 included in an employee's regular rate of pay for overtime wage and sick pay calculations.
5 Defendant failed to do so, thereby failing to pay employees their full wages as required under
6 the Labor Code.

7 36. Plaintiff and members of the Class received shift differentials/shift premiums
8 and extra benefits that must be included when calculating their regular rates of pay for
9 purposes of overtime and sick pay. However, Defendant failed to correctly calculate Plaintiff
10 and members of the Class's regular rate of pay to include all applicable remuneration,
11 including, but not limited to, shift differentials/shift premiums, etc.

12 37. Plaintiff's paystubs dated April 7, 2023 and April 21, 2023 show that he was
13 paid shift differential/shift premium "SUN1" of \$1 as a final sum at the same time as overtime.
14 However, overtime was paid at exactly 1.5 times the base rate. Thus, the shift
15 differentials/shift premiums were not incorporated into the overtime rate. Further, Plaintiff's
16 paystub dated May 19, 2023, shows that he was paid shift differential/shift premium "SUN1"
17 of \$1 as a final sum at the same time as sick pay. However, sick pay was paid at exactly the
18 base rate. Thus, the shift differentials/shifts premium were not incorporated into the sick pay
19 rate. Additionally, Plaintiff's pay stub date April 7, 2023, shows that he was paid shift
20 differential/shift premium of "NCSH" as a final sum at the same time as overtime. However,
21 overtime was paid at exactly 1.5 times base rate. Thus, the shift differential/shift premium
22 were not incorporated into the overtime rate. As a result, Defendant failed to correctly
23 calculate Plaintiff and members of the Class's regular rate of pay, overtime rate of pay and
24 sick pay because Defendant failed to blend shift differential pay into their regular rate of pay
25 for purposes of determining the appropriate rate of pay, overtime rate and sick pay rate. As a
26 result, Plaintiff and Class members were paid a rate less than the rate required under California
27 law.

38. Further, Defendant provided Plaintiff and Class members with extra benefits, such as a 15% store discount. The discount was added to a pay card. However, Plaintiff's paystubs dated February 10, 2023, April 7, 2023 and April 21, 2023, show that overtime was paid at the rate of exactly 1.5 times the base rate. Thus, the extra benefits were not incorporated into the overtime rate. Additionally, Plaintiff's paystub dated May 19, 2023, shows that sick pay was paid at the rate of exactly the base rate. As a result, the extra benefits were not incorporated into the sick pay rate.

FAILURE TO PAY OVERTIME WAGES

39. Under California law, non-exempt employees as defined by Wage Order 7, 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.

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

41. 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

42. Under California law, non-exempt employees as defined by Wage Order 7, are entitled to minimum wages.

43. 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

1 in a civil action the unpaid balance of the full amount of this minimum wage.” The applicable
2 IWC Wage Order(s), including IWC Wage Order No. 7-2001, obligates employers to pay each
3 employee minimum wages for all hours worked.

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

10 45. At all times during the relevant time period, it was the practice and policy of
11 Defendant to pay employees less than minimum wage rates due to off the clock work,
12 rounding of hours and the lack of proper meal/rest breaks. Monies for these underpaid
13 amounts remain due and owing.

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

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

20 **INTERRUPTED/LATE MEAL BREAKS**

21 47. Plaintiff and the Class members were routinely not afforded proper meal breaks.
22 Meal breaks were routinely interrupted and/or not afforded. Further, on days when Plaintiff
23 and Class members worked 10–12-hour shifts, they were not afforded second meal breaks.

24 **REST BREAKS NOT AFFORDED**

25 48. Plaintiff and the Class members were routinely not afforded second rest breaks.
26 At times, Plaintiff and Class members had to work during their rest periods. Plaintiff and Class
27 members were only afforded 1 rest break per day despite working at least 8 hours per day.

1 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

2 49. As a result of Defendant’s failure to pay employees required overtime wages,
3 minimum wages, failure to afford meal/rest breaks, reporting time pay and unlawful deductions
4 of wages, the wage statements issued to the employees did not comply with *Labor Code* §226
5 and California Industrial Welfare Commission (“IWC”) Wage Order 7 in that they did not
6 accurately reflect all wages earned and due and owing.

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

8 50. As a further result of Defendant’s failure to pay employees at required overtime
9 wage rates due to off the clock work, minimum wages, for meal/rest breaks not properly
10 afforded, reporting time pay, sick pay, when the employees left their employ, they were not
11 timely paid all wages due them, as required by *Labor Code* §§ 201, 202 and Wage Order 7.
12 Further, it was the practice of Defendant to not pay employees the final paychecks within the
13 time periods mandated by *Labor Code* §§201, 202 and Wage Order 7.

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 51. Defendant failed to reimburse Plaintiff and Class members with their necessary
16 business expenses, such as cell phone and vehicle expenses.

17 **REPORTING TIME PAY**

18 52. Defendant failed to pay Plaintiff and Class members reporting time pay. Plaintiff
19 and Class members were required to show up for work and were then sent home within the first
20 2 hours of work due to a lack of work.

21 **UNLAWFUL DEDUCTION OF WAGES**

22 53. Plaintiff’s paystubs show unlawful deductions of wages for “AFEE” and
23 “ADMFEED” of \$1.50 from every check. These deductions were not authorized by Plaintiff and
24 Class Members. Defendant engaged in the unlawful deduction of wages of Plaintiff and
25 members of the Class.

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1 **FAILURE TO PROPERLY PAY SICK PAY WAGES**

2 54. Defendant acted intentionally and with deliberate disregard to the rights of
3 Plaintiff and members of the Class by paying sick pay at exactly the base rate, and not
4 including shift differentials/shift premiums into the sick pay rate.

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

6 55. Defendant failed to allow Plaintiff to timely inspect his personnel records and
7 payroll file.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES**

10 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order 7 By Plaintiff Against**
11 **Defendant and Does 1 through 100)**

12 56. Plaintiff and the Class reallege and incorporate by reference all of the allegations
13 set forth in this Complaint.

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

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

23 59. Pursuant to IWC Wage Order No. 7-2001, § 3, "Employment beyond eight (8)
24 hours in any workday is permissible provided the employee is compensated for such overtime
25 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
26 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
27 workday...

28 60. California Labor Code section 558 provides in pertinent part:

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

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

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

13 (3) Wages recovered pursuant to this section shall be paid to the affected
14 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 61. As alleged above, Defendant required Plaintiff and the Class to regularly
18 perform compensable tasks pre- and post-shift off-the-clock for which they did not receive any
19 compensation.

20 62. California law also requires that any compensation, including a shift
21 differential/shift premium, extra benefits or other pay, must be included in the regular rate of
22 pay. Defendant failed to blend shift differentials/shift premiums and extra benefits when
23 calculating Plaintiff and Class members' regular rate in workweeks when they earned such pay
24 and worked overtime. As such, Plaintiff and Class members were paid at an overtime rate less
25 than the rate required under California law.

26 63. Throughout Plaintiff's employment, Defendant failed and refused to pay and
27 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

28 64. The foregoing overtime compensation is owed and unpaid. As a direct and
proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class
Members suffered damages in an amount to be proven at trial.

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1 65. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
2 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
3 attorneys' fees, costs and interest.

4 **SECOND CAUSE OF ACTION**

5 **FOR FAILURE TO PAY MINIMUM WAGES**

6 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 7 By Plaintiff Against**
7 **Defendant and Does 1 through 100)**

8 66. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 67. *Labor Code* § 1197 states the California requirement that employees must be
11 paid at least the minimum wage fixed by the Commission, and any payment of less than the
12 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
13 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
14 the full amount of this minimum wage." IWC Wage Order 7-2001 also obligates employers to
15 pay each employee minimum wages for all hours worked. These minimum wage standards
16 apply to each hour employees worked for which they were not paid. Therefore, an employer's
17 failure to pay for any particular hour of time worked by an employee is unlawful, even if
18 averaging an employee's total pay over all hours worked, paid or not, results in an average
19 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
20 (2005).

21 68. Here, Plaintiff and Class members were required to engage in off the clock
22 activities and they were not paid for this off-the-clock time. Defendant failed to pay Plaintiff
23 and the Class for these off-the clock activities and as result thereof, Plaintiff and the Class were
24 not paid minimum wages that was due to them. Further, Defendant's failure to afford meal/rest
25 breaks also resulted in Plaintiff and the Class not being paid minimum wages that was due to
26 them. Lastly, Plaintiff's paystubs reflect rounded hours.

27 69. California Labor Code section 558 provides in pertinent part:
28

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

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

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

13 (3) Wages recovered pursuant to this section shall be paid to the affected
14 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 70. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
18 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
19 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

20 71. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
21 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
22 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
23 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
24 the time associated with the overtime for which they received no compensation. *See Sillah v.*
25 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
26 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
27 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
28 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

72. 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.

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

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY FOR MEAL BREAKS**

7 **(IWC Wage Order No. 7; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and**
8 **Does 1 through 100)**

9 74. Plaintiff and the Class reallege and incorporate by reference all of the allegations
10 set forth in this Complaint.

11 75. California Labor Code §226.7(a) prohibits an employer from requiring an
12 employee to work during any meal period mandated by an applicable Industrial Wage Order.
13 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
14 employee to work during a meal or rest break or recovery period mandated pursuant to an
15 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
16 Commission..."

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

19 77. IWC Order No. 7-2001(11)(A) provides, in relevant part: "No employer shall
20 employ any person for a work period of more than five (5) hours without a meal period of not
21 less than 30-minutes, except that when a work period of not more than six (6) hours will
22 complete the day's work the meal period may be waived by mutual consent of the employer and
23 the employee."

24 78. IWC Order No. 7-2001 (11)(c) further provides, in relevant part: "Unless the
25 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
26 considered an 'on duty' meal period and counted as time worked."

27 79. Section 512(a) of the California Labor Code provides, in relevant part, that:
28

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

11 80. The Labor Code and Wage Order provisions cited above require California
12 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
13 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
14 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
15 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
16 the fifth hour of their shifts. Further, at times Plaintiff and Class members' meal breaks were
17 shortened. On days when Plaintiff and Class members worked between 10-12 hours, they were
18 not afforded second meal breaks.

19 81. As alleged herein, Plaintiff and the members of the Class were at times required
20 to work through their meal period at the fifth hour of their shifts and/or their meal breaks were
21 interrupted and/or afforded late at the direction of Defendant and/or with their endorsement,
22 encouragement, knowledge and acquiescence.

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

83. Defendant has a policy or practice of failing to ensure that Plaintiff and members of the Class take the meal periods required by California Labor Code §226.7 and IWC Wage Order No. 7-2001 §11.

84. By their actions in not affording Plaintiff and Class Members compliant meal periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendant failed to provide employees with statutory timely off-duty meal periods.

85. 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.

86. 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).

87. 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 PROVIDE REST PERIODS

**(Labor Code § 226.7 and IWC Wage Order No. 7 By Plaintiff Against Defendant and
Does 1 through 100)**

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

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1 89. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
2 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
3 per four hours of work, or major fraction thereof.

4 90. Labor Code § 226.7 and IWC Wage Order No. 7 provide that if an employer
5 fails to provide an employee with rest periods in accordance with those provisions, the
6 employer shall pay the employee one hour of pay at the employee's regular rate of
7 compensation for each workday that the rest periods were not so provided.

8 91. Defendant has intentionally and improperly denied second rest periods to
9 Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 7.

10 92. At all times relevant hereto, Defendant failed to provide rest periods as required
11 by Labor Code § 226.7 and the applicable Wage Order.

12 93. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiff and
13 the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts
14 which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional
15 limits of the Court and which will be ascertained according to proof at trial.

16 **FIFTH CAUSE OF ACTION**

17 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

18 **ITEMIZED STATEMENTS**

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

20 94. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Complaint.

22 95. Pursuant to IWC Wage Order No. 7, Defendant was the employer of Plaintiff
23 and the Class.

24 96. Pursuant to California Labor Code sections 226, and Wage Order 7-2001 section
25 7, Defendant is required to maintain and provide accurate records relating to employee
26 compensation including all formulas and production records used to calculate wages due.

27 97. Defendant is further required to provide, *inter alia*, semimonthly or at the time
28 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)

1 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
2 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
3 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

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

9 99. Notwithstanding these provisions, Defendant has engaged in a uniform practice
10 of refusing to maintain and provide the accurate records and wage statements required by
11 California law.

12 100. Throughout the Class Period, Defendant intentionally and knowingly provided
13 Plaintiff and other members of the Class with weekly itemized wage statements containing
14 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
15 that the payments owed to Plaintiff and the members of the Class for overtime wages due to off
16 the clock work, minimum wages, premium pay for meal/rest breaks, reporting time pay and
17 sick pay, were not included in gross wages earned by Plaintiff and members of the Class.
18 Further, Defendant failed to furnish Plaintiff and the Class, upon payment of wages, itemized
19 statements accurately showing the number of hours worked and the rates paid.

20 101. Further, the company name on Plaintiff and Class members' paystubs is slightly
21 different from the company name on the Secretary of State website. Further, Plaintiff's
22 paystubs dated May 19, 2023 and September 22, 2023, do not list hours for the item "SUN".
23 Also, Plaintiff's paystubs dated January 13, 2023 and April 7, 2023 do not list the hours for the
24 item "NCSH" listed on the paystubs. Additionally, Plaintiff's paystubs dated May 19, 2023 and
25 September 22, 2023 do not list rates for the item "SUN" listed on the paystubs. Also, Plaintiff's
26 paystubs dated January 13, 2023 and April 7, 2023, do not list rates for the item "NCSH" listed
27 on the paystubs. Lastly, on Plaintiff's paystub dated March 22, 2024, the item "SUN" is listed
28 at a supplemental rate and the Total Hours Worked are not listed on the paystub.

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

3 103. Plaintiff and members of the Class were damaged by these failures because,
4 among other things, the failures led them to believe that they were not entitled to overtime
5 wages, minimum wages, premium pay for meal/rest breaks not properly afforded, reporting
6 time pay and sick pay, even though they were so entitled and these failures hindered them from
7 determining the amounts of wages owed to them.

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

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

13 **SIXTH CAUSE OF ACTION**

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

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

16 106. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

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

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

24 109. Plaintiff and the Class were discharged and/or resigned from Defendant's
25 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them for
26 overtime, meal/rest breaks not properly afforded, reporting time pay and sick pay.

27 110. Further, Plaintiff resigned on or about March 20, 2023. He received his final pay
28 via direct deposit 2 weeks after Defendant stated he abandoned his job, on April 10, 2024.

1 Also, Plaintiff's last available paystub shows the pay period ending on March 16, 2024. Thus,
2 Plaintiff was never paid for work performed on March 17, 2024.

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

5 **SEVENTH CAUSE OF ACTION**

6 **REIMBURSEMENT OF BUSINESS EXPENSES**

7 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

8 112. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 113. Labor Code §2802 requires employers to indemnify employees for all necessary
11 expenditures incurred by employees in the discharge of their duties.

12 114. At all times relevant herein, Defendant was aware that Plaintiff and Class
13 members were using their personal cell phones and vehicles for business, but failed to
14 indemnify Plaintiff and Class members for all their business-related expenses, including wear
15 and tear expenses, in accordance with Labor Code §2802. Plaintiff and Class members were
16 required to use their personal cell phones both on and off the clock for work-related activities.
17 Plaintiff and the Class were required to use their cell phones for group chat texts and calls from
18 their managers. Plaintiff is informed and believes and thereon alleges that at all relevant times,
19 Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their
20 work-related expenses that they incurred in using their cell phones and vehicles for work-
21 related purposes.

22 115. As a result of Defendant's conduct, Plaintiff and Class Members suffered
23 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
24 business-related expenses incurred in the discharge of their duties.

25 116. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
26 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
27 costs of suit.

1 **EIGHTH CAUSE OF ACTION**

2 **REPORTING TIME PAY**

3 **(Wage Order No. 7 By Plaintiffs against Defendant and Does 1 through 100)**

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

6 118. Wage Order 7-2001 provides that "[e]ach workday an employee is required to
7 report for work and does report, but is not put to work or is furnished less than half said
8 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
9 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours,
10 at the employee's regular rate of pay, which shall not be less than the minimum wage."

11 119. Defendant had a policy and practice that required Plaintiff and Class members to
12 show up for work and then sent them home within the first two hours of their shifts if no work
13 was available.

14 120. This has resulted in Defendant failing to pay required reporting time pay to
15 Plaintiff and the Class.

16 121. As a direct and proximate results of Defendant's actions as set forth herein,
17 Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all
18 required reporting time pay.

19 **NINTH CAUSE OF ACTION**

20 **UNLAWFUL DEDUCTION OF WAGES**

21 **(Cal. Labor Code § 221 By Plaintiffs against Defendant and Does 1 through 100)**

22 122. Plaintiff and the Class reallege and incorporate by reference all of the allegations
23 set forth in this Complaint.

24 123. California Labor Code § 221 states that "[i]t shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer to
26 said employee."

27 //

28 //

124. Labor Code § 221 reflects “‘California's strong public policy favoring the protection of employees' wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal. App. 4th 1152, 1166.

125. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. *See Sciborski*, 205 Cal. App. 4th at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal. App. 4th 1109, 1124.

126. As previously alleged herein, Defendant engaged in the unlawful deduction of wages when it deducted wages for “AFEE” and “ADMFEED” of \$1.50 from every check. These deductions were not authorized by Plaintiff and Class Members.

127. Defendant's unlawful taking back of wages earned in violation of Labor Code Section 221 subjects them to civil penalties pursuant to Labor Code Section 225.5, in addition to the unlawfully withheld wages due, in the amount of \$100 for any initial violation for each pay period for which Plaintiff and members of the Class were underpaid, and, for each subsequent violation, \$200 for each pay period for which Plaintiff and the Class were underpaid.

128. As a result of Defendant's violations of Labor Code § 221, Plaintiff and the members of the Class seek to recover the total amount of wages unlawfully deducted, as well as penalties, interest, attorneys' fees, and costs as permitted under California law.

TENTH CAUSE OF ACTION

FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE

(Cal. Labor Code §§201-204, 218, 218.5, 233, 245, 246 et. seq. – By Plaintiffs against Defendant and Does 1 through 100)

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

1 130. Section 246 (1) requires that employers pay sick time pay to non-exempt
2 employees at the employee's "regular rate of pay." Employers must calculate paid sick leave for
3 nonexempt employees (1) "in the same manner as the regular rate of pay for the workweek in
4 which the employee uses paid sick time, whether or not the employee actually works overtime
5 in that workweek" or (2) "by dividing the employee's total wages, not including overtime
6 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
7 of employment."

8 131. The "regular rate of pay" includes all remuneration for employment paid to the
9 employee with the exception of overtime pay and includes, but is not limited to base hourly
10 wages, shift differentials, extra benefits and other forms of non-discretionary wages.

11 132. Defendant paid Plaintiff and the members of the Class for sick leave at the
12 incorrect rate of pay. Defendant paid Plaintiff and members of the Class at their base rate of pay,
13 as opposed to the regular rate of pay, which would take into account all non-discretionary
14 incentives, shift differentials and extra benefits, or by dividing the employees' total wages, not
15 including overtime premium pay, by the employees' total hours worked in the full pay periods
16 of the prior 90 days of employment, as required by Section 246. This resulted in underpayments
17 of sick pay to Plaintiff and members of the Class.

18 133. Moreover, Section 204 provides that wages are generally due and payable no later
19 than seven days after the end of a pay period or at least twice during each calendar month, on
20 days designated in advance as the regular paydays. Section 201 provides if an employer
21 discharges an employee, the wages earned and unpaid at the time of discharge are due and
22 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid
23 wages no later than 72 hours after an employee quits his or her employment, unless the employee
24 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case
25 the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if
26 an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then
27 the wages of the employee shall continue as a penalty from the due date, and at the same rate
28 until paid, but the wages shall not continue for more than thirty (30) days.

1 134. Because Defendant did not pay, or timely pay, Plaintiff and members of the Class
2 all owing and underpaid sick pay wages, Defendant violated Sections 201-204, 246, and other
3 Labor Code sections. Defendant willfully failed to timely pay Plaintiff and members of the Class
4 all their wages due during employment and failed to timely pay all their wages due upon the
5 termination of their employment within the times prescribed by the Labor Code and are therefore
6 subject to applicable penalties, including a waiting time penalty, for each day, up to a thirty (30)
7 day maximum, pursuant to Section 203.

8 135. Labor Code section 233 provides: “Any employer who provides sick leave for
9 employees shall permit an employee to use in any calendar year the employee's accrued and
10 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
11 during six months at the employee's then current rate of entitlement, for the reasons specified in
12 subdivision (a) of Section 246.5.”

13 136. During the relevant time period, Defendant intentionally and willfully failed to
14 pay Plaintiff and members of the Class their sick pay wages at the regular rate of pay required
15 by law. Accordingly, Plaintiff and members of the Class did not receive the full amount of paid
16 sick time that they were entitled to receive by law, and were therefore denied the right to use
17 sick leave within the meaning of Labor Code Sections 233(a) and (c).

18 137. Any employer who violates Labor Code section 233 is liable to employees for
19 the greater of one days' pay or actual damages, reasonable equitable relief, and reasonable
20 attorneys' fees and costs. Lab. Code sections 233(d), (e).

21 138. Labor Code section 218 authorizes a private right of action to recover unpaid
22 wages, including under sections 204 and 233.

23 139. Pursuant to Labor Code sections 218 and 218.5, Plaintiff and members of the
24 Class are entitled to recover the full amount of their unpaid wages, applicable penalties,
25 prejudgment interest on the amount of their unpaid wages, reasonable attorneys' fees and costs
26 of suit.

27 //

28 //

1 **ELEVENTH CAUSE OF ACTION**

2 **(Failure to Allow Inspection of Employment Records in Violation of *Labor Code* §1198.5**

3 **By Plaintiffs against Defendant and Does 1 through 100)**

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

6 141. California Labor Code Section 1198.5 provides:

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

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

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

20 (l) A current or former employee may also bring an action for injunctive relief
21 to obtain compliance with this section, and may recover costs and reasonable
22 attorney's fees in such an action.

23 142. Additionally, pursuant to Wage Order 7, at section 7 re: Records, employers are
24 required to keep accurate payroll records on each employee, and such records must be made
25 readily available for inspection by the employee upon reasonable request. The employer must
26 also maintain accurate production records.

27 143. On or about September 27, 2024, Plaintiff' counsel issued a written request to
28 Defendant for copies of his personnel records.

1 144. Under California Labor Code Sections 226, 432 and 1198.5, such records were
2 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
3 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
4 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
5 records.

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

11 **TWELFTH CAUSE OF ACTION**

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

14 146. Plaintiff and the Class reallege and incorporate by reference all of the allegations
15 set forth in this Complaint.

16 147. Pursuant IWC Wage Order No. 7, Defendant was the employer of Plaintiff and
17 the Class. Defendant is also a "person" as that term is defined in Business & Professions Code
18 §17021.

19 148. The Business & Professions Code defines unfair competition as any unlawful,
20 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
21 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
22 overtime wages; (2) pay minimum wages; (3) pay premium pay for meal breaks not properly
23 afforded; (4) pay premium pay for rest breaks not properly afforded; (5) furnish Plaintiff and
24 the Class with accurate itemized wage statements, (6) pay Plaintiff and the Class wages due
25 when leaving their employ, (7) reimburse business expenses, (8) pay reporting time pay, (9)
26 refrain from making illegal deductions of wages, (10) paying sick pay, and (11) providing and
27 allowing inspection of personnel records, all in violation of Business & Professions Code §§
28 17200 *et seq.*

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

150. All the acts described herein are violations of, among other things, the Labor Code and Industrial Commission Wage Order No. 7, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 et seq.

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

152. 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.

153. 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.

PRAYER FOR RELIEF

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

- 1 1. For compensatory damages in the amount of overtime wages due to Plaintiff and
2 Class members, according to proof;
- 3 2. For compensatory damages in the amount of minimum wages due to Plaintiff
4 and Class members, according to proof;
- 5 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
6 Class Members for each workday that a meal and/or rest period was not provided;
- 7 4. For compensatory damages in the amount of Plaintiff and Class Members' cell
8 phone and vehicle expenses for business purposes, costs and attorneys' fees pursuant to Cal.
9 Code Civ. Proc. §2802(c);
- 10 5. For reporting time pay;
- 11 6. For an award of all amounts unlawfully deducted from Plaintiff and members of
12 the Class's wages;
- 13 7. For unpaid sick pay;
- 14 8. For an award of consequential damages in Plaintiff and Class Members' favor
15 and against Defendant, in an amount to be proven at trial;
- 16 9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 17 10. For payment to Plaintiff and Class members of waiting time penalties pursuant
18 to *Cal. Lab. Code* §203, in an amount equal to his and Class members' respective daily rates of
19 pay at the time of termination or layoff, multiplied by the total amount of days elapsed between
20 the date of the involuntary termination, and/or 72 hours after notice of the voluntary
21 termination, up to a maximum of 30 days' pay, according to proof;
- 22 11. For specific relief enforcing waiting time penalties of 30 days of per diem wages
23 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
- 24 12. For prejudgment interest accrued on all due and unpaid overtime and minimum
25 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
26 1194(a), according to proof;
- 27 13. For injunctive relief requiring Defendant to comply with Labor Code
28 1198.5(b)(1);

1 14. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 7-
2 2001(14);

3 15. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
4 according to proof;

5 16. For reasonable costs, including attorneys' fees, in an amount according to proof
6 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5, 2802 and/or *Cal. Code of Civ.*
7 *Proc.* §1021.5;

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

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

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

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

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

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff Eric Allen Phillips hereby respectfully requests a trial by jury for all claims and
18 issues raised in his Complaint that may be entitled to a jury trial.

19
20 LIPELES LAW GROUP, APC

21 Date: September 27, 2024

22
23 By:  _____

24 Thomas H. Schelly
25 Attorneys for Plaintiff
26 Eric Allen Phillips
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