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Superior Court of California
County of Fresno
By: S. Garcia, Deputy

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

ALEXEY MIRANDA, an individual, on
his own behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

PRIMELINK EXPRESS INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24CECG04220

CLASS ACTION COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION AS EXEMPT (Wage Order No. 9);**
- 2. FAILURE TO PAY OVERTIME (Cal. Labor Code §§ 510, 558, 1194, 1194.3, 1198; Wage Order No. 9);**
- 3. FAILURE TO PAY MINIMUM WAGES ((Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9);**
- 5. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 6. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; Wage Order No. 9);**
- 7. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203; Wage Order No. 9);**
- 8. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 9. FAILURE TO PROVIDE SICK LEAVE (Cal. Labor Code §246);**
- 10. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**

1 **11. UNFAIR COMPETITION (Cal. Bus. & Prof.**
2 **Code §§17200 et seq.).**

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7 **DEMAND FOR A JURY TRIAL**
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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 ALEXEY MIRANDA (“Plaintiff”) alleges the following:

15 1. This is a class action brought under California law by an individual who was
16 employed by PrimeLink Express Inc. (“PrimeLink” or “Defendant”) (along with DOES 1
17 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself and
18 others similarly situated to recover wages from Defendant due to Defendant’s systematic
19 willful misclassification and 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, provide sick leave and personnel
22 records.

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

27 3. Plaintiff, like his co-workers whom Defendant also employed during the
28 applicable limitations period, spend their workdays as employment as Diesel Mechanics and
other employees, under illegal and highly regimented circumstances. That regimen results from

1 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
2 accomplishes by not paying for all labor costs, willfully misclassifying employees as exempt,
3 failing to pay overtime wages due to off the clock work, failing to provide minimum wages,
4 failing to provide meal and rest breaks (or pay the statutory compensation due); failing to issue
5 accurate wage statements, failing to pay all wages on termination, failing to reimburse business
6 expenses, failing to provide sick leave, and by using other unlawful stratagems to ensure that
7 labor costs remain artificially low.

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

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

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

22 7. Pursuant to the California Labor Code, on or about September 26, 2024,
23 Plaintiff filed a notice with Labor and Workforce Development Agency (LWDA) of his intent
24 to pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
25 Plaintiff reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint
26 to add a cause of action pursuant to PAGA under Labor Code §§2699 *et seq.*

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JURISDICTION AND VENUE

8. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Alexey Miranda 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 Fresno and because Defendant owned and operated their business in the County of Fresno.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Fresno, California;
- (b) Employed as an hourly employee for Defendant in Fresno, California;
- (c) Was willfully misclassified as exempt in violation of IWC Wage Order No. 9;
- (d) Did not receive overtime wages due to off the clock work in violation of *Labor Code* §§510, 1198 and IWC Wage Order No. 9;
- (e) Did not receive minimum wages as required by *Labor Code* §§1194, 1197, 1197.1, 1198, 119 and IWC Wage Order No. 9;
- (f) Did not receive the meal periods required by *Labor Code* §266.7 and IWC Wage Order No. 9;
- (g) Did not receive the rest periods required by *Labor Code* §266.7 and IWC Wage Order No. 9;
- (h) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (i) When terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;

- 1 (j) Was not reimbursed for business expenses as required by *Labor Code*
2 §2802;
3 (k) Was not paid sick leave wages when due in violation of Cal. *Labor Code*
4 §246; and
5 (l) Was not timely provided his personnel records. Each of these was a
6 violation of the *Labor Code*.

7 **DEFENDANT**

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

- 10 (a) A California corporation, with a principal place of business at 4451 N.
11 Brawley Avenue, Fresno, California 93722. Defendant has been
12 authorized to do business and has been doing business in the County of
13 Fresno;
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 and salaried basis;
17 (d) Willfully misclassified Plaintiff and all putative Class members as
18 exempt;
19 (e) Failed to pay Plaintiff and all putative Class members overtime wages;
20 (f) Failed to pay Plaintiff and all putative Class members minimum wages;
21 (g) Failed to provide Plaintiff and all putative Class members with meal and
22 rest periods, failed to provide Plaintiff and all putative Class Members
23 with accurate itemized wage statements;
24 (h) Failed to issue final paychecks timely to Plaintiff and all putative Class
25 Members;
26 (i) Failed to reimburse business expenses to Plaintiff and all putative Class
27 Members;
28 (j) Failed to provide sick leave wages; and

1 (k) Failed to provide Plaintiff with his personnel records. Each of these was
2 a violation of the *Labor Code*.

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

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

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

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

27 16. Plaintiff is informed and believes, and based on that information and belief
28 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,

1 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
2 themselves and entered into a combination and systemized campaign of activity to *inter alia*
3 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
4 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
5 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
6 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
7 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
8 the actions of one Defendant were accomplished in concert with, and with the knowledge,
9 ratification, authorization and approval of each of the other Defendants.

10 **CLASS ALLEGATIONS**

11 **A. The Definition of the Class**

12 17. The Class ("the Class") is defined as follows:

13 (a) "All current and former employees who were hourly and/or salaried paid
14 employees of Defendant and worked for Defendant in California at any time
15 during the period commencing on the date that is four (4) years prior to the
16 filing of this Complaint and continuing through the present date (the "Class
17 Period")."

18 (b) "All persons who were hourly and/or salaried paid employees of Defendant
19 and worked for Defendant in California and left the employ of Defendant at any
20 time during the period commencing on the date that is within one (1) year prior
21 to the filing of this Complaint and continuing through the present date (the
22 "Class Period")."

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

26 27 **B. Maintenance of the Action**

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

4 **C. The Class Requisites**

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

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

8 (a) The persons who comprise the Class are so numerous that the joinder of all
9 those persons is impracticable and the disposition of their claims as a Class
10 will benefit the parties and the Court;

11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the Class and will apply
13 uniformly to every Class member;

14 (c) The claims of the representative Plaintiff are typical of the claims of each
15 Class member. Plaintiff, like all Class members, has sustained damages
16 arising from Defendant's violations of the laws of the State of California.
17 Plaintiff, and the Class members, were and are similarly or identically
18 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
19 pattern of misconduct engaged in by the Defendant;

20 (d) The representative Plaintiff has, and will continue to, fairly and adequately
21 represent and protect the interests of the Class and has retained counsel
22 who are competent and experienced in class action litigation. There are no
23 material conflicts between the claims of the representative Plaintiff and the
24 Class members that would make class certification inappropriate. Counsel
25 for the Class will vigorously assert the claims of all Class members.

26 22. The persons who comprise the Class are so numerous that joining all of them is
27 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
28 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff

1 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
2 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
3 Plaintiff are experienced, qualified and generally able to conduct complex class action
4 litigation.

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

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

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

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

11 GENERAL ALLEGATIONS

12 25. At all times material hereto, Defendant has been and is, a transportation services
13 company.

14 26. Plaintiff and members of the Class were employed as Diesel Mechanics and
15 other non-exempt employees in California at various times during the Class Period.

16 27. The employment by Defendant of the Class Members, and each them, is
17 governed by Industrial Welfare Commission Wage Order 9, which covers those persons
18 employed in the transportation industry.

19 THE CONDUCT

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

22 29. Starting on or about February 3, 2023 and continuing to May 3, 2024, Defendant
23 employed Plaintiff on an hourly basis as a Diesel Mechanic at its location in Fresno, California.

24 30. While employed by Defendant as a Diesel Mechanic, Plaintiff was paid \$18.00
25 per hour until July 2023. Thereafter, Plaintiff was willfully misclassified as exempt and paid a
26 "salary" based on a 48-hour workweek.

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WILLFUL MISCLASSIFICATION AS EXEMPT

31. While working as Diesel Mechanics and other employees, Plaintiff and Class members were willfully misclassified as exempt in violation of IWC Wage Order No. 9. Plaintiff and Class members did not earn salaries no less than 2 times the state minimum wage and did not have authority to hire and fire employees.

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OFF-THE-CLOCK WORK

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

33. Defendant required Plaintiff and the Class to regularly perform compensable tasks during meal breaks and post-shift off-the-clock for which they did not receive any compensation. Specifically, Plaintiff and Class members’ meal breaks were at times interrupted and they were required to work during their meal breaks while off the clock. Further, approximately 3 times per month, Plaintiff and Class members worked after clocking out cleaning the shop for 30 minutes after clocking out. Additionally, beginning in July 2023 and thereafter, about 3 times per week, Plaintiff and Class members performed off the clock work for 1.5 hours per day after clocking out for their shift. Plaintiff and Class members’ supervisors required the off the clock work. As a result, and because they improperly treated such off the clock work during meal breaks and post-shift activities as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

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FAILURE TO PAY OVERTIME WAGES

34. Under California law, non-exempt employees as defined by Wage Order 9, 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.

35. As alleged above, Defendant required Plaintiff and the Class to regularly perform compensable tasks during meal breaks and post-shift off the clock for which they did

1 not receive any compensation. Additionally, Plaintiff and Class members' meal/rest breaks
2 were routinely interrupted, afforded late and/or not afforded.

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

7 **FAILURE TO PAY MINIMUM WAGES**

8 37. Under California law, non-exempt employees as defined by Wage Order 9, are
9 entitled to minimum wages.

10 38. Under California law, an hourly paid employee is entitled to be paid a minimum
11 wage. Labor Code Section 1197 states the California requirement that employees must be paid
12 at least the minimum wage fixed by the Commission or by any applicable state or local law,
13 and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section
14 1194 states "any employee receiving less than the legal minimum wage...is entitled to recover
15 in a civil action the unpaid balance of the full amount of this minimum wage." The applicable
16 IWC Wage Order(s), including IWC Wage Order No. 9-2001, obligates employers to pay each
17 employee minimum wages for all hours worked.

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

24 40. At all times during the relevant time period, it was the practice and policy of
25 Defendant to pay employees less than minimum wage rates due to off the clock work and the
26 lack of proper meal/rest breaks. Monies for these underpaid amounts remain due and owing.

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

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

5 **INTERRUPTED/LATE/NOT AFFORDED MEAL BREAKS**

6 43. Plaintiff and the Class members were routinely not afforded proper meal breaks.
7 Meal breaks were routinely interrupted, afforded late and/or not afforded. Further, on days
8 when Plaintiff and Class members worked 10–12-hour shifts, they were not afforded second
9 meal breaks.

10 **REST BREAKS NOT AFFORDED/INTERRUPTED**

11 44. Plaintiff and the Class members were routinely not afforded proper rest breaks.
12 At times, Plaintiff and Class members' rest breaks were routinely interrupted. On days when
13 Plaintiff and Class members worked between 10-12 hours, they were not afforded third rest
14 breaks.

15 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

16 45. As a result of Defendant's failure to pay employees required overtime wages,
17 minimum wages, failure to afford meal/rest breaks and failure to pay sick pay, the wage
18 statements issued to the employees did not comply with *Labor Code* §226 and California
19 Industrial Welfare Commission ("IWC") Wage Order 9 in that they did not accurately reflect
20 all wages earned and due and owing.

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

22 46. As a further result of Defendant's failure to pay employees at required overtime
23 wage rates due to off the clock work, minimum wages, for meal/rest breaks not properly
24 afforded, wages for sick pay, when the employees left their employ, they were not timely paid
25 all wages due them, as required by *Labor Code* §§ 201, 202 and Wage Order 9. Further, it was
26 the practice of Defendant to not pay employees the final paychecks within the time periods
27 mandated by *Labor Code* §§201, 202 and Wage Order 9.

1 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

2 47. Defendant failed to reimburse Plaintiff and Class members with their necessary
3 business expenses, such as cell phone use.

4 **FAILURE TO PROPERLY PROVIDE SICK PAY WAGES**

5 48. Defendant acted intentionally and with deliberate disregard to the rights of
6 Plaintiff and members of the Class by failing to provide sick pay.

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

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

10 **FIRST CAUSE OF ACTION**

11 **WILLFUL MISCLASSIFICATION AS EXEMPT**

12 **(IWC Wage Order No. 9 By Plaintiffs Against Defendant and Does 1 through 100)**

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

15 51. Defendant misclassified Plaintiff and Class members as exempt employees
16 rather than non-exempt in violation of IWC Wage Order No. 9, for their own financial benefit.

17 52. IWC Wage Order No. 9 identifies three exemptions to the provisions of the
18 wage order: executive exemption, administrative exemption, and professional exemption. The
19 administrative exemption at issue applies to an employee: 1) whose duties and responsibility
20 relate to management policies or general business operations of the employer, and 2) who
21 customarily and regularly exercises discretion and independent judgment, and 3) who
22 regularly assists a proprietor or an employee employed in an executive or administrative
23 capacity, or 4) who performs, under general supervision, works along specialized or technical
24 lines requiring specialized training, experience or knowledge, or 5) who executes, under only
25 general supervision, special assignments, and 6) must earn a monthly salary equivalent to no
26 less than two (2) times the state minimum wage for full time employment, and 6) who is
27 primarily engaged in duties which meet the test of the exemption.

1 53. On information and belief Defendant's managing agents and/or officers setting
2 policy knowingly advised Defendant to wrongfully treat Plaintiff and Class members as exempt
3 employees.

4 54. Plaintiff and Class members did not meet the requirements of being "salary
5 exempt" as set forth by California Labor Code § 515(a). Plaintiff and Class members did not
6 have independent judgment or discretion in their job positions, did not earn monthly salaries
7 equivalent to no less than 2 times the state minimum wage, did not supervise any employees
8 and spent less than 50% of their time performing managerial duties. Plaintiff and Class
9 members did not have authority to hire or fire employees.

10 55. Specifically, in July 2023, Defendant placed Plaintiff on a fixed salary, paying
11 him the equivalent of 48 hours per week and paying Plaintiff the same amount every week,
12 even if he worked more.

13 56. Defendant thus improperly classified Plaintiff and Class members as exempt
14 from the wage and hour requirements set forth in the Labor Code and IWC Wage Order No. 9.

15 57. Because of this misclassification, Plaintiff and Class members suffered damages
16 as a result of Defendant's violation of IWC Wage Order No. 9, in an amount according to
17 proof.

18 58. Based on Defendant's conduct as alleged herein, Defendant is liable for
19 damages and statutory penalties pursuant to Labor Code §226, Labor Code §218.5 and
20 penalties pursuant to Labor Code §§203 and 206.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES**

23 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order 9 By Plaintiff Against**
24 **Defendant and Does 1 through 100)**

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

27 60. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
28 Code §§510, 1194, and 1198, and IWC Wage Order No. 9, Defendant was required to

1 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
2 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
3 hours on the seventh (7th) consecutive day of any work week.

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

8 62. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
9 hours in any workday is permissible provided the employee is compensated for such overtime
10 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
11 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
12 workday...

13 63. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

27 64. As alleged above, Defendant required Plaintiff and the Class to regularly
28 perform compensable tasks during their meal breaks and post-shift off-the-clock for which they

1 did not receive any compensation. Further, Plaintiff and Class members were required by
2 Defendant to use their personal cell phones while off the clock, for texting/calling their
3 supervisors for about 5 minutes every day.

4 65. Specifically, Defendant had a company-wide policy of failing to properly pay
5 and calculate wages due.

6 66. Throughout Plaintiff's employment, Defendant failed and refused to pay and
7 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

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

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

14 **THIRD CAUSE OF ACTION**
15 **FOR FAILURE TO PAY MINIMUM WAGES**

16 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 9 By Plaintiff Against**
17 **Defendant and Does 1 through 100)**

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

20 70. *Labor Code* § 1197 states the California requirement that employees must be
21 paid at least the minimum wage fixed by the Commission, and any payment of less than the
22 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
23 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
24 the full amount of this minimum wage." IWC Wage Order 9-2001 also obligates employers to
25 pay each employee minimum wages for all hours worked. These minimum wage standards
26 apply to each hour employees worked for which they were not paid. Therefore, an employer's
27 failure to pay for any particular hour of time worked by an employee is unlawful, even if
28 averaging an employee's total pay over all hours worked, paid or not, results in an average

1 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
2 (2005).

3 71. Here, Plaintiff and Class members were required to engage in off the clock
4 activities and they were not paid for this off-the-clock time. Defendant failed to pay Plaintiff
5 and the Class for these off-the clock activities and as result thereof, Plaintiff and the Class were
6 not paid minimum wages that was due to them. Further, Defendant's failure to afford meal/rest
7 breaks also resulted in Plaintiff and the Class not being paid minimum wages that was due to
8 them. Lastly, Plaintiff's paystubs reflect quarter rounded hours.

9 72. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

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

26 74. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
27 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
28 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid

1 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
2 the time associated with the overtime for which they received no compensation. *See Sillah v.*
3 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
4 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
5 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
6 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

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

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY FOR MEAL BREAKS**

17 **(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiff Against Defendant and**
18 **Does 1 through 100)**

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

21 78. California Labor Code §226.7(a) prohibits an employer from requiring an
22 employee to work during any meal period mandated by Industrial Wage Order No. 9. Section
23 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
24 employee to work during a meal or rest break or recovery period mandated pursuant to an
25 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
26 Commission..."

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

1 80. IWC Order No. 9-2001(11)(A) provides, in relevant part: "No employer shall
2 employ any person for a work period of more than five (5) hours without a meal period of not
3 less than 30-minutes, except that when a work period of not more than six (6) hours will
4 complete the day's work the meal period may be waived by mutual consent of the employer and
5 the employee."

6 81. IWC Order No. 9-2001 (11)(c) further provides, in relevant part: "Unless the
7 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
8 considered an 'on duty' meal period and counted as time worked."

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

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

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

23 84. At times Plaintiff and Class members' meal breaks were interrupted, afforded
24 late and/or not afforded at all. On days when Plaintiff and Class members worked between 10-
25 12 hours, they were not afforded second meal breaks. Further, Defendant illegally combined
26 meal breaks with rest breaks.

27 //

28 //

1 85. Further, beginning in March 2024, Defendant took away Plaintiff and Class
2 members' swipe cards and instructed them not to clock out for meal breaks. Thus, after March
3 2024, their meal breaks were not recorded.

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

7 87. Under California law, employers must also record their employees' meal
8 periods: "Every employer shall keep accurate information with respect to each employee,
9 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
10 operations cease ... need not be recorded." IWC Order No. 9, § (7)(A)(3). Where the employer
11 has failed to keep records required by statute, the consequences of such failure should fall on
12 the employer, not the employee. In such a situation, imprecise evidence by the employee can
13 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
14 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
15 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
16 known its employees were regularly not afforded proper meal periods during the Class Period.

17 88. Defendant has a policy or practice of failing to ensure that Plaintiff and
18 members of the Class take the meal periods required by California Labor Code §226.7 and
19 IWC Wage Order No. 9-2001 §11.

20 89. By their actions in not affording Plaintiff and Class Members proper meal
21 periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 9 in
22 the amount of one additional hour of pay at the employee's regular rate of compensation for
23 each work period during each day in which Defendant failed to provide employees with
24 statutory timely off-duty meal periods.

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

28

91. 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).

92. 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 IWC Wage Order No. 9.

FIFTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

**(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiff Against Defendant and
Does 1 through 100)**

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

94. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

95. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

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

97. Additionally, Plaintiff and Class members were not afforded third rest breaks on days when they worked between 10-12 hours.

98. At all times relevant hereto, Defendant failed to provide compliant rest periods as required by Labor Code § 226.7 and Wage Order No. 9.

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

5 **SIXTH CAUSE OF ACTION**

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

7 **ITEMIZED STATEMENTS**

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

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

11 101. Pursuant to IWC Wage Order No. 9, Defendant was the employer of Plaintiff
12 and the Class.

13 102. Pursuant to California Labor Code sections 226, and Wage Order 9-2001 section
14 7, Defendant is required to maintain and provide accurate records relating to employee
15 compensation including all formulas and production records used to calculate wages due.

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

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

26 105. Notwithstanding these provisions, Defendant has engaged in a uniform practice
27 of refusing to maintain and provide the accurate records and wage statements required by
28 California law.

1 106. Throughout the Class Period, Defendant intentionally and knowingly provided
2 Plaintiff and other members of the Class with weekly itemized wage statements containing
3 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
4 that the payments owed to Plaintiff and the members of the Class for overtime wages due to off
5 the clock work, minimum wages, premium pay for meal/rest breaks, sick pay, were not
6 included in gross wages earned by Plaintiff and members of the Class. Further, Defendant
7 failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately
8 showing the number of hours worked and the rates paid.

9 107. Further, the company name on Plaintiff's and Class members' paystubs does not
10 match the Defendant's name listed on the California Secretary of State website.

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

13 109. Plaintiff and members of the Class were damaged by these failures because,
14 among other things, the failures led them to believe that they were not entitled to overtime
15 wages, premium pay for meal/rest breaks not properly afforded and sick pay, even though they
16 were so entitled and these failures hindered them from determining the amounts of wages owed
17 to them.

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

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

23 **SEVENTH CAUSE OF ACTION**

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

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

26 112. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this Complaint.
28

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

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

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

116. Further, Plaintiff's last paystub shows that the regularly scheduled pay date was May 20, 2024. That date was at least 10 days late based on the fact that it lists 36 regular hours for a pay period starting on May 5, 2024. Plaintiff was not paid any waiting time penalties. Also, Plaintiff did not receive his last pay on the same date as his resignation. He resigned on May 3, 2024, but did not receive his last pay until 17 days later. Plaintiff's last pay did not include waiting time penalties.

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

EIGHTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

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

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

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

120. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their cell phones for business, but failed to indemnify Plaintiff and Class members for all their business-related expenses, including wear and tear expenses, in accordance with Labor Code §2802. Plaintiff and the Class were required to use their cell

1 phones for work-related activities both on and off the clock. Plaintiff is informed and believes
2 and thereon alleges that at all relevant times, Defendant maintained a practice of not
3 reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in
4 using their cell phones for work-related purposes.

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

8 122. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
9 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
10 costs of suit.

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE PAID SICK LEAVE**

13 **(Cal. Labor Code § 246 – By Plaintiffs against Defendant and Does 1 through 100)**

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

16 124. Plaintiff worked in California for 30 or more days within a year from
17 commencement of his employment for Defendant.

18 125. Although California Labor Code section 246 required it, Plaintiff did not accrue
19 paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the
20 commencement of employment.

21 126. Although California Labor Code section 246 required it, Defendant did not
22 accrue paid sick days at a regular basis that would have provided at least 24 hours of accrued
23 sick leave or paid time off by the 120th calendar day of employment or each calendar year, or
24 in each 12-month period.

25 127. Instead, Plaintiff and Class members were provided 2 sick days per year at the
26 beginning of the year. However, the minimum number of required sick hours per year is 3
27 days.

28

128. Plaintiff's paystubs do not show any sick pay paid to Plaintiff. In fact, when Plaintiff took a 1 week leave due to a mental health issue, Defendant did not pay him for any sick days.

129. Because Defendant failed to properly accrue sick time in compliance with the law, Defendant is liable to Plaintiff and Class members for payment at the regular rate of compensation for each sick time period that Defendant did not provide sick pay, pursuant to Labor Code section 246.

130. Defendant's unlawful acts deprived Plaintiff and Class members of sick pay in amounts to be determined at trial, and they are entitled to recover these amounts, with interest, attorneys' fees, and costs.

TENTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)

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

132. California Labor Code Section 1198.5 provides:

- (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the 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...

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

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

6 133. Additionally, pursuant to Wage Order 9, at section 7 re: Records, employers are
7 required to keep accurate payroll records on each employee, and such records must be made
8 readily available for inspection by the employee upon reasonable request. The employer must
9 also maintain accurate production records.

10 134. On or about September 26, 2024, Plaintiff's counsel issued a written request to
11 Defendant for copies of his personnel records. Defendant failed to produce Plaintiff's
12 personnel file.

13 135. Under California Labor Code Sections 226, 432 and 1198.5, such records were
14 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
15 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
16 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
17 records.

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

23 **ELEVENTH CAUSE OF ACTION**

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

26 137. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this Complaint.
28

1 138. Pursuant to IWC Wage Orders No. 9, Defendant was the employer of Plaintiff
2 and the Class. Defendant is also a "person" as that term is defined in Business & Professions
3 Code §17021.

4 139. The Business & Professions Code defines unfair competition as any unlawful,
5 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
6 described herein, Defendant has engaged in unfair and unlawful practices by (1) willfully
7 misclassifying Plaintiff and the Class as exempt; failing to (2) pay overtime wages; (3) pay
8 minimum wages; (4) pay premium pay for meal breaks not properly afforded; (5) pay premium
9 pay for rest breaks not properly afforded; (6) furnish Plaintiff and the Class with accurate
10 itemized wage statements, (7) pay Plaintiff and the Class wages due when leaving their employ,
11 (8) reimburse business expenses, (9) pay sick pay; and (10) provide personnel records, all in
12 violation of Business & Professions Code §§ 17200 *et seq.*

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

17 141. All the acts described herein are violations of, among other things, the Labor
18 Code and Industrial Commission Wage Order No. 9, are unlawful and in violation of public
19 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
20 constitute unfair and unlawful business practices in violation of Business & Professions Code
21 §§ 17200 *et seq.*

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

26 143. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
27 above-described business practices are unfair and unlawful and that injunctive relief should be
28

1 issued restraining Defendant from engaging in any of the above described unfair and unlawful
2 business practices in the future.

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

10 **PRAYER FOR RELIEF**

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

13 1. For compensatory damages in the amount of overtime wages due to Plaintiff and
14 Class members, according to proof;

15 2. For compensatory damages in the amount of minimum wages due to Plaintiff
16 and Class members, according to proof;

17 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
18 Class members for each workday that a meal and/or rest period was not provided;

19 4. For compensatory damages in the amount of Plaintiff and Class members' cell
20 phone for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
21 §2802(c);

22 5. For all sick pay owed;

23 6. For injunctive relief requiring Defendant to comply with Labor Code
24 1198.5(b)(1);

25 7. For an award of consequential damages in Plaintiff and Class members' favor
26 and against Defendant, in an amount to be proven at trial;

27 8. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
28

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

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

8 11. For prejudgment interest accrued on all due and unpaid overtime and minimum
9 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
10 1194(a), according to proof;

11 12. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 9-
12 2001(14);

13 13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
14 proof;

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

18 15. For an award of restitution of wages to Plaintiff and Class Members in an
19 amount equal to the amount of wages owed and unpaid, according to proof;

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

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

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

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

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff Alexey Miranda hereby respectfully requests a trial by jury for all claims and
28 issues raised in his Complaint that may be entitled to a jury trial

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LIPELES LAW GROUP, APC

Date: September 26, 2024

By: 
Thomas H. Schelly
Attorneys for Plaintiff
Alexey Miranda