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9 Attorneys for Plaintiff(s),

10 JESUS TORRES, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES**

13 **(UNLIMITED JURISDICTION)**

14 JESUS TORRES, on behalf of himself and all
15 others similarly situated, and the general public,
16 and as an "aggrieved employee" on behalf of
17 other "aggrieved employees" and the State of
18 California under the Labor Code Private
19 Attorneys General Act of 2004,

20 *Plaintiff,*

21 vs.

22 INLAND INDUSTRIAL SOLUTIONS, INC., a
23 California corporation; INLAND GUARD
24 SERVICES, INC., a California corporation;
25 Donaciano Cuellar, a natural person; and DOES
26 1-50, inclusive,

27 *Defendants.*

FILED
Superior Court of California
County of Los Angeles

12/20/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

Case No. 24STCV28324

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab. Code §§ 2898, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Jesus Torres (hereafter “Plaintiff” or “Torres”), on behalf of himself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Inland Industrial
9 Solutions, Inc., a California corporation, Inland Guard Services, Inc., a California corporation,
10 Donaciano Cuellar, and Does 1 through 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
13 related relief. These claims are based on Defendants’ failures to:

14 (A) Pay all wages, including minimum, regular, overtime and doubletime
15 wages, earned for all hours worked at the correct rates of pay;

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

18 (D) Pay premium wages for unprovided meal periods;

19 (E) Pay premium wages for unprovided rest breaks;

20 (F) Issue only accurate and complete itemized wage statements;

21 (G) Issue statements of the total hours of rest and recovery periods;

22 (H) Issue statements of sick leave available;

23 (I) Timely pay wages upon termination of employment;

24 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
25 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

26 **II. THE PARTIES**

27 3. Plaintiff Jesus Torres is a resident of California. At all relevant times, Plaintiff was
28 an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an



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1 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

2 4. Defendant Inland Industrial Solutions, Inc. is a corporation organized and existing
3 under the laws of California and also a citizen of California based on Plaintiff’s information and
4 belief.

5 5. Defendant Inland Guard Services, Inc. is a corporation organized and existing
6 under the laws of California and also a citizen of California based on Plaintiff’s information and
7 belief.

8 6. Defendant Donaciano Cuellar is natural person and also a citizen of California
9 based on Plaintiff’s information and belief.

10 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
11 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
12 is informed and believes and thereon alleges that said Defendants are legally responsible for the
13 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
14 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
15 when ascertained.

16 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
18 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
19 within the course and scope of such agency, employment, direction and control, and with the
20 approval and ratification of each of the other Defendants.

21 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
22 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
23 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
24 Members or otherwise complying with their rights in accordance with applicable California labor
25 laws as alleged herein.

26 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
27 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
28 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-



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described class in accordance with applicable laws as alleged herein.

III. CLASS ALLEGATIONS

11. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

12. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly and non-exempt, including security guards, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

14. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

15. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, and rest period premium wages;

B. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;



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1 C. Whether Defendants failed to authorize and permit the Class Members to
2 take all rest periods in compliance with California law;

3 D. Whether Defendants knowingly and intentionally failed to provide the
4 class with accurate and complete itemized wage statements;

5 E. Whether Defendants willfully failed to provide the class with timely final
6 wages;

7 F. Whether Defendants engaged in unfair competition within the meaning of
8 Business and Professions Code sections 17200, et seq., with respect to the Class; and

9 G. Whether Class Members are entitled to restitution of money or property
10 that Defendants may have acquired from them through alleged Labor Code violations.

11 16. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
12 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
13 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
14 Code, the Wage Order, and the Business and Professions Code.

15 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
16 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
17 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
18 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
19 Members.

20 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
21 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
22 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
23 Plaintiff and absent Class Members.

24 19. **Superiority:** A class action is vastly superior to other available means for fair and
25 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
27 and efficiently prosecute their common claims in a single forum without the unnecessary
28 duplication of effort and expense that numerous individual actions would entail. In addition, the



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monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

20. The Wage Order applies to “all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical, Mechanical, and Similar Occupations” to include

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical,



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1 clerical, mechanical, and kindred occupations
2 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
3 Defendants, Torres, and all of the Class Members were covered by the Wage Order because
4 Torres and all of the Class Members worked for the Defendants as guards, their assistants and
5 other related occupations listed as professional, semiprofessional, technical, clerical, mechanical,
6 and kindred occupations. Accordingly, Torres and all of the other Class Members are entitled to
7 the protections the Wage Order provides.

8 21. On approximately December 4, 2023, the Defendants began to employ Torres in
9 Compton, CA in the position of hourly, non-exempt security guard. The Defendants continuously
10 employed him in that capacity until on or about March 22, 2024 when his employment ended.

11 22. At all relevant times, the Defendants issued wages to Torres and all of the other
12 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
13 times, the Defendants classified Torres and all of the other Class Members as non-exempt
14 employees entitled to the protections of the Labor Code and the Wage Order.

15 23. At all relevant times, the Defendants failed to compensate Torres and all of the
16 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
17 Defendants failed to pay Torres and the other Class Members hourly wages of at least the
18 applicable minimum wage for the City and/or County they worked in. The Defendants also failed
19 to pay Torres and the other Class Members any wages for time they spent on-duty during meal
20 periods.

21 24. At all relevant times, the Defendants failed to compensate Torres and all of the
22 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
23 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
24 required Torres and the other Class Members to work in excess of eight hours per day and 40
25 hours per week. Instead of paying overtime premium wages of time and one half for such work,
26 the Defendants paid Torres and the other Class Members in cash at their regular rates of pay.

27 25. At all relevant times, the Defendants failed to compensate Torres and all of the
28 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over



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1 the first eight of the seventh day of the workweek. The Defendants required Torres and the other
2 Class Members to work in excess of 12 hours per day. Instead of paying doubletime premium
3 wages of time and one half for such work, the Defendants paid Torres and the other Class
4 Members in cash at their regular rates of pay.

5 26. At all relevant times, the Defendants failed to provide Torres and all of the other
6 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required Torres
7 and the other Class Members to clock out for their meal periods though they expected them to
8 remain in duty for such periods. The Defendants did not pay Torres and the other Class Members
9 for such on-duty periods. The Defendants also failed to pay premium wages for days on which
10 they failed to provide Torres and all of the other Class Members with meal periods as required by
11 law.

12 27. At all relevant times, the Defendants failed to authorize and permit Torres and all
13 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
14 or major portion thereof. The Defendants required Torres and the other Class Members to remain
15 in duty for their rest periods. The Defendants also failed to pay premium wages for days on which
16 they failed to authorize and permit Torres and all of the other Class Members to take rest breaks
17 as required by law.

18 28. At all relevant times, the Defendants failed to provide paid sick leave to Torres
19 and all of the other Class Members.

20 29. At all relevant times, the Defendants unlawfully deducted wages belonging to
21 Torres and all of the other Class Members. The Defendants deducted the time Torres and the other
22 Class Members spent in on-duty meal periods from their wages.

23 30. At all relevant times, the Defendants failed to issue to Torres and all of the other
24 Class Members complete and accurate wage statements that state all hours worked at the correct
25 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
26 the wage statements they issued to Torres and all of the other Class Members the unpaid wages
27 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
28 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages



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1 earned, all rest break premium wages earned, all unlawfully deducted wages, the employer's name
2 and address, all earned sick pay, start date of pay period, end date of pay period, gross wages
3 earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name
4 of employer, address of employer, all hourly rates, all hours work at each rate of pay, and related
5 information.

6 31. At all relevant times, the Defendants failed to provide Torres and all of the other
7 Class Members with statements of sick leave available, or paid time off in lieu of sick leave.

8 32. At all relevant times, the Defendants also failed to timely pay Torres and all of the
9 other Class Members all earned wages as described above during and at the conclusion of
10 employment.

11 33. At all relevant times, the Defendants failed to maintain accurate employee records
12 of Torres and all of the other Class Members.

13 34. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
14 unlawful practices and policies, Plaintiff and the Class Members were:

- 15 A. Not provided with all off duty meal periods;
16 B. Not authorized and permitted to take all rest break periods;
17 C. Not paid one hour's pay for each workday in which Defendants failed to
18 authorize and permit them to take one or more timely rest periods;
19 D. Not paid one hour's pay for each workday in which Defendants failed to
20 provide them with one or more timely meal periods;
21 E. Not paid all wages earned, including, but not limited to, minimum, regular,
22 overtime, and doubletime wages for work performed while clocked out;
23 F. Not provided with accurate and complete wage statements; and
24 G. Not timely paid all earned and unpaid wages at the time their employment
25 ended.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
3 **CORRECT RATES**

4 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

5 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

6 35. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 36. At all relevant times, Plaintiff and the Class Members have been non-exempt
8 employees entitled to the protections of both the Labor Code and the Wage Order.

9 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
10 **THE CORRECT RATES OF PAY**

11 37. Section 2 of the Wage Order defines “hours worked” as “the time during which an
12 employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so.”

14 38. Section 3 of the Wage Order states:

15
16 (A) Daily Overtime - General Provisions

- 17
18 (1) The following overtime provisions are applicable to
19 employees 18 years of age or over and to employees 16 or
20 17 years of age who are not required by law to attend
21 school and are not otherwise prohibited by law from
22 engaging in the subject work. Such employees shall not be
23 employed more than eight (8) hours in any workday or
24 more than 40 hours in any workweek unless the employee
25 receives one and one-half (1 ½) times such employee’s
26 regular rate of pay for all hours worked over 40 hours in
27 the workweek. Eight (8) hours of labor constitutes a day’s
28 work. Employment beyond eight (8) hours in any workday



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or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

39. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

40. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours

1 in one workday and any work in excess of 40 hours in any one workweek and the
2 first eight hours worked on the seventh day of work in any one workweek shall be
3 compensated at the rate of no less than one and one-half times the regular rate of
4 pay for an employee. Any work in excess of 12 hours in one day shall be
5 compensated at the rate of no less than twice the regular rate of pay for an
6 employee. In addition, any work in excess of eight hours on any seventh day of a
7 workweek shall be compensated at the rate of no less than twice the regular rate of
8 pay of an employee. Nothing in this section requires an employer to combine more
9 than one rate of overtime compensation in order to calculate the amount to be paid
10 to an employee for any hour of overtime work.

11 41. Labor Code section 1194 invalidates any agreement between an employer and an
12 employee to work for less than the minimum wage required under the applicable Wage Order.

13 42. Labor Code section 1197 makes it unlawful for an employer to pay an employee
14 less than the minimum wage required under the applicable Wage Order for all hours worked
15 during a payroll period.

16 43. Labor Code section 1198 makes it unlawful for an employer to employ an
17 employee under conditions that violate the Wage Order.

18 44. In conjunction, these provisions of the Labor Code require employers to pay non-
19 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
20 worked, including unrecorded hours when the employer knew or reasonably should have known
21 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
22 Cal.4th 575, 585.)

23 45. At all relevant times during the applicable limitations period, Defendants failed to
24 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
25 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
26 doubletime hours, respectively, that they worked at the correct rates of pay.

27 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
28 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



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1 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
2 rates of pay as required by California law.

3 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
4 **LABOR CODE**

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

6
7 (a) Any employer or other person acting on behalf of an employer,
8 who violates, or causes to be violated, any provision regulating
9 minimum wages or hours and days of work in any order of the
10 Industrial Welfare Commission, or violates, or causes to be
11 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
12 held liable as the employer for such violation.

13
14 (b) For purposes of this section, the term “other person acting on
15 behalf of an employer” is limited to a natural person who is an
16 owner, director, officer, or managing agent of the employer, and
17 the term “managing agent” has the same meaning as in subdivision
18 (b) of Section 3294 of the Civil Code.

19 At all relevant times, Donaciano Cuellar was an employer of Torres and all of the other Class
20 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
21 employers identified above. Donaciano Cuellar directly or indirectly, or through an agent or other
22 person, employed and exercised control over the wages, hours, and/or working conditions of the
23 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
24 On behalf of himself and all of the other Class Members, Torres seeks an award of unpaid wages,
25 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
26 relief against Donaciano Cuellar that is the same as the award against the other Defendants on the
27 same grounds for which Plaintiff seeks against the Defendants.

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1 **C. UNLAWFUL WAGE DEDUCTIONS**

2 48. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
3 receive from an employee any part of wages theretofore paid by said employer to said employee.”
4 The Defendants deducted wages from the wages earned by Torres and all of the other Class
5 Members for hours spent working or in on-duty meal periods in violation of Labor Code § 221.

6 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
8 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
9 law.

10 **D. FAILURE TO PROVIDE SICK LEAVE**

11 50. Labor Code section 233 states

12
13 Any employer who provides sick leave for employees shall permit an
14 employee to use in any calendar year the employee’s accrued and available
15 sick leave entitlement, in an amount not less than the sick leave that would
16 be accrued during six months at the employee’s then current rate of
17 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

18
19 51. Labor Code section 246(a)(1) states

20
21 An employee who, on or after July 1, 2015, works in California for the
22 same employer for 30 or more days within a year from the commencement
23 of employment is entitled to paid sick days as specified in this section.

24
25 52. Labor Code section 246.5 states

26
27 (a) Upon the oral or written request of an employee, an employer shall
28 provide paid sick days for the following purposes:



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(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

(c) (1) An employer shall not deny an employee the right to use accrued sick days ...

53. The Defendants failed to provide Torres and all of the other Class Members with paid sick leave.

54. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Class Members sick leave as required by California law.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

55. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

56. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

57. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.



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1 58. In relevant part, In relevant part, California Labor Code § 512 states:

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

9
10 An employer shall not employ an employee for a work period of
11 more than 10 hours per day without providing the employee with
12 a second meal period of not less than 30 minutes, except that if the
13 total hours worked is no more than 12 hours, the second meal
14 period may be waived by mutual consent of the employer and the
15 employee only if the first meal period was not waived.

16
17 59. In relevant part, Section 11 of the Wage Order states:

18
19 **Meal Periods**

20
21 (A) No employer shall employ any person for a work period of more
22 than five (5) hours without a meal period of not less than 30
23 minutes, except that when a work period of not more than six (6)
24 hours will complete the day's work the meal period may be waived
25 by mutual consent of the employer and the employee. Unless the
26 employee is relieved of all duty during a 30 minute meal period,
27 the meal period shall be considered an "on duty" meal period and
28 counted as time worked. . . .



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1
2 (B) If an employer fails to provide an employee a meal period in
3 accordance with the applicable provisions of this Order, the
4 employer shall pay the employee one (1) hour of pay at the
5 employee's regular rate of compensation for each workday that the
6 meal period is not provided.
7

8 60. In relevant part, California Labor Code § 226.7 states:
9

10 (b) An employer shall not require an employee to work during
11 a meal or rest period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the
13 Industrial Welfare Commission, the Occupational Safety
14 and Health Standards Board, or the Division of
15 Occupational Safety and Health.
16

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

28 61. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day



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1 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
2 to a second 30-minute meal period when they worked more than 10 hours in a workday.

3 62. Defendants intentionally failed to provide Plaintiff and the Class Members with
4 all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
5 required Torres and the other Class Members to clock out for their meal periods though they
6 expected them to remain in duty for such periods. The Defendants did not pay Torres and the
7 other Class Members for such on-duty periods.

8 63. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
9 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
10 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
11 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
12 Members with timely meal periods.

13 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not providing the and the Class Members with all off-duty meal
16 periods required by California law.

17 65. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
18 suffered damages in amounts subject to proof to the extent they were not paid additional wages
19 owed for all meal periods not provided to them.

20 66. By reason of the above, Plaintiff and the Class Members are entitled to premium
21 wages for workdays in which one or more meal periods were not provided to them pursuant to
22 California Labor Code § 226.7.

23 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
24 **LABOR CODE**

25 67. In relevant part, Labor Code section 558.1 states:

- 26
27 (c) Any employer or other person acting on behalf of an employer,
28 who violates, or causes to be violated, any provision regulating



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1 minimum wages or hours and days of work in any order of the
2 Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation.

5
6 (d) For purposes of this section, the term “other person acting on
7 behalf of an employer” is limited to a natural person who is an
8 owner, director, officer, or managing agent of the employer, and
9 the term “managing agent” has the same meaning as in subdivision
10 (b) of Section 3294 of the Civil Code.

11 At all relevant times, Donaciano Cuellar was an employer of Torres and all of the other Class
12 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
13 employers identified above. Donaciano Cuellar directly or indirectly, or through an agent or other
14 person, employed and exercised control over the wages, hours, and/or working conditions of the
15 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
16 On behalf of himself and all of the other Class Members, Torres seeks an award of unpaid wages,
17 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
18 relief against Donaciano Cuellar that is the same as the award against the other Defendants on the
19 same grounds for which Plaintiff seeks against the Defendants.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

22 **Lab. Code § 226.7**

23 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

24 68. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

25 69. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class Members have been employees of Defendants and entitled to the benefits and protections
27 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

28 70. In relevant part, California Labor Code § 1198 states:



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1 The maximum hours of work and the standard conditions of labor
2 fixed by the commission shall be the maximum hours of work and
3 the standard conditions of labor for employees. The employment
4 of any employee for longer hours than those fixed by the order or
5 under conditions of labor prohibited by the order is unlawful.
6

7 71. In relevant part, Section 12 of the Wage Order states:
8

9 Rest Periods:

10 (A) Every employer shall authorize and permit all employees to take
11 rest periods, which insofar as practicable shall be in the middle of
12 each work period. The authorized rest period time shall be based
13 on the total hours worked daily at the rate of ten (10) minutes net
14 rest time per four (4) hours or major fraction thereof. However, a
15 rest period need not be authorized for employees whose total daily
16 work time is less than three and one-half (3 ½) hours. Authorized
17 rest period time shall be counted as hours worked for which there
18 shall be no deduction from wages.

19 (B) If an employer fails to provide an employee a rest period in
20 accordance with the applicable provisions of this order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee's regular rate of compensation for each workday that the
23 rest period is not provided.
24

25 72. In relevant part, California Labor Code § 226.7 states:
26

27 (b) An employer shall not require an employee to work during
28 a meal or rest period mandated pursuant to an applicable



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1 statute, or applicable regulation, standard, or order of the
2 Industrial Welfare Commission, the Occupational Safety
3 and Health Standards Board, or the Division of
4 Occupational Safety and Health.

5
6 (c) If an employer fails to provide an employee a meal period
7 or rest period in accordance with a state law, including, but
8 not limited to, an applicable statute or applicable
9 regulation, standard, or order of the Industrial Welfare
10 Commission, the Occupational Safety and Health
11 Standards Board, or the Division of Occupational Safety
12 and Health, the employer shall pay the employee one
13 additional hour of pay at the employee's regular rate of
14 compensation for each work day that the meal or rest
15 period is not provided.

16 73. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
17 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
18 of work, or major fraction thereof.

19 74. Defendants intentionally failed to authorize and permit Plaintiff and the Class
20 Members to take all 10-minute rest periods free from any work duties in accordance with the
21 Wage Order.

22 75. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
23 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
24 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
25 Plaintiff and the other Class Members to take timely rest periods.

26 76. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
27 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
28 fraction thereof. Defendants did not seek an exemption from the rest period protections of the



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1 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
2 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
3 to authorize and permit them to take 10-minute rest periods every four hours worked or major
4 fraction thereof.

5 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
8 take all rest breaks required by California law.

9 78. Defendants failed to provide Plaintiff with all required rest breaks in accordance
10 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not providing the Class Members with all rest breaks required by
13 California law.

14 79. Defendants failed to pay Plaintiff the additional wages required by California
15 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
16 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
17 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
18 Class Members with additional wages for all rest breaks not provided to them as required by
19 California Labor Code § 226.7.

20 80. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
21 suffered damages in amounts subject to proof to the extent they were not paid additional wages
22 owed for all rest breaks not provided to them.

23 81. By reason of the above, Plaintiff and the Class Members are entitled to premium
24 wages for workdays in which one or more rest breaks were not provided to them pursuant to
25 California Labor Code § 226.7.

26 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
27 **LABOR CODE**

28 82. In relevant part, Labor Code section 558.1 states:



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

At all relevant times, Donaciano Cuellar was an employer of Torres and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Donaciano Cuellar directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Torres seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Donaciano Cuellar that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

3 **Lab. Code § 226**

4 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

5 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
6 **STATEMENTS**

7 83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 84. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
9 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
10 statement showing:

11 A. Gross wages earned;

12 B. Total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

15 C. The number of piece rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis;

17 D. All deductions, provided that all deductions made on written orders of the
18 Employee may be aggregated and shown as one item;

19 E. Net wages earned;

20 F. The inclusive dates of the period for which the employee is paid;

21 G. The name of the employee and his or her social security number, except
22 that by January 1, 2008, only the last four digits of his or her social security number or an
23 employee identification number other than a social security number may be shown on the itemized
24 statement;

25 H. The name and address of the legal entity that is the employer; and

26 I. All applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee.

28 85. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury



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1 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
2 the employer fails to provide accurate and complete information as required by California Labor
3 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
4 alone one or more of the following:

5 A. The amount of the gross wages or net wages paid to the employee during
6 the pay period or any of the other information required to be provided on the itemized wage
7 statement pursuant to California Labor Code § 226(a);

8 B. Which deductions the employer made from gross wages to determine the
9 net wages paid to the employee during the pay period;

10 C. The name and address of the employer and, if the employer is a farm labor
11 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
12 and address of the legal entity that secured the services of the employer during the pay period;

13 D. The name of the employee and only the last four digits of his or her social
14 security number or an employee identification number other than a social security number; and

15 E. The number of piece-rate units earned and the piece rate.

16 86. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
17 means a reasonable person would be able to readily ascertain the information without reference
18 to other documents or information.

19 87. As alleged herein, at all relevant times during the applicable limitations period,
20 Defendants violated California Labor Code section 226 because they did not properly and
21 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
22 the corresponding number of hours worked at each rate by the employee and other requirements
23 of California Labor Code section 226. Defendants failed to state in the wage statements they
24 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
25 including, but not limited to, regular and overtime wages for work they performed off-the-clock
26 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
27 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
28 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class



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Members that state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, the employer's name and address, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and related information.

88. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

89. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

B. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE

90. Labor Code § 246 states

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants



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1 failed to provide Torres and all of the other Class Members with an itemized wage statement or
2 separate writing that set forth the amount of paid sick leave available.

3 91. Pursuant to California Labor Code § 226(e), Plaintiffs and the other Class
4 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
5 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
6 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
7 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
8 also entitled to an award of costs and reasonable attorneys' fees.

9 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
10 **LABOR CODE**

11 92. In relevant part, Labor Code section 558.1 states:

12
13 (a) Any employer or other person acting on behalf of an employer,
14 who violates, or causes to be violated, any provision regulating
15 minimum wages or hours and days of work in any order of the
16 Industrial Welfare Commission, or violates, or causes to be
17 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
18 held liable as the employer for such violation.

19
20 (b) For purposes of this section, the term "other person acting on
21 behalf of an employer" is limited to a natural person who is an
22 owner, director, officer, or managing agent of the employer, and
23 the term "managing agent" has the same meaning as in subdivision
24 (b) of Section 3294 of the Civil Code.

25 At all relevant times, Donaciano Cuellar was an employer of Torres and all of the other Class
26 Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
27 employers identified above. Donaciano Cuellar directly or indirectly, or through an agent or other
28 person, employed and exercised control over the wages, hours, and/or working conditions of the



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1 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
2 On behalf of himself and all of the other Class Members, Torres seeks an award of unpaid wages,
3 interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related
4 relief against Donaciano Cuellar that is the same as the award against the other Defendants on the
5 same grounds for which Plaintiff seeks against the Defendants.

6 **FIFTH CAUSE OF ACTION**

7 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

8 **(Lab. Code §§ 201, 202, and 203)**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 94. At all relevant times during the applicable limitations period, Plaintiffs and the
12 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
13 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

14 95. Labor Code § 201 provides that all earned and unpaid wages of an employee who
15 is discharged are due and payable immediately at the time of discharge.

16 96. Labor Code § 202 provides that all earned and unpaid wages of an employee who
17 quits after providing at least 72-hours notice before quitting are due and payable at the time of
18 quitting and that all earned and unpaid wages of an employee who quits without providing at least
19 72-hours notice before quitting are due and payable within 72 hours.

20 97. The Defendants failed to pay Torres and all of the other Class Members whose
21 employment ended all of the earned but unpaid wages described above by the conclusion of their
22 employment with Torres, including minimum wages, regular wages, overtime wages, doubletime
23 wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted
24 wages, and related compensation.

25 98. By failing to pay such earned wages to Plaintiff and the Class Members,
26 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
27 § 201 or § 202.

28 99. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff



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1 and the Class Members all of their earned and unpaid wages (described above) have been willful
2 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
3 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
4 they have had the ability to comply with those legal requirements.

5 100. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
6 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
7 penalties for each Class Member.

8 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
9 **LABOR CODE**

10 101. In relevant part, Labor Code section 558.1 states:

11
12 (a) Any employer or other person acting on behalf of an employer,
13 who violates, or causes to be violated, any provision regulating
14 minimum wages or hours and days of work in any order of the
15 Industrial Welfare Commission, or violates, or causes to be
16 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violation.

18
19 (b) For purposes of this section, the term “other person acting on
20 behalf of an employer” is limited to a natural person who is an
21 owner, director, officer, or managing agent of the employer, and
22 the term “managing agent” has the same meaning as in subdivision
23 (b) of Section 3294 of the Civil Code.

24 102. At all relevant times, Donaciano Cuellar was an employer of Torres and all of the
25 other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and
26 the other employers identified above. Donaciano Cuellar directly or indirectly, or through an
27 agent or other person, employed and exercised control over the wages, hours, and/or working
28 conditions of the Class Members, and caused the violations to the Labor Code and the Wage



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1 Order described above. On behalf of himself and all of the other Class Members, Torres seeks an
2 award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys'
3 fees, costs, and related relief against Donaciano Cuellar that is the same as the award against the
4 other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

5 **SIXTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

7 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

9 103. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 104. At all relevant times during the applicable limitations period, Plaintiff and the
11 Class Members have been employees of Defendants and entitled to the benefits and protections
12 of the Business and Professions Code §§ 17200, *et seq.*

13 105. The unlawful conduct of Defendants alleged herein amount to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
15 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
16 gained a competitive advantage over other comparable companies doing business in California
17 that comply with their legal obligations to compensate employees for all earned wages.

18 106. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
19 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
20 Members were deprived of unpaid wages, deducted wages, meal and rest period premium wages,
21 and comparable money and property.

22 107. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
23 Class Members are entitled to restitution of all monies rightfully belonging to them that
24 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
25 practices.

26 108. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
27 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
28 1021.5, the substantial benefit doctrine and/or the common fund doctrine.



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SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

Lab.Code §§ 2698, *et seq.*

**(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,
against all Defendants)**

109. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

110. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 20, 2023, and ending on the date that final judgment is entered in this action.

111. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

112. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information



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1 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
2 intervals for all wages earned and all hours worked.

3 113. During the applicable time period, Defendants violated California Labor Code §§
4 201, 202, 203, 204, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 1174, 1194, 1197, and 1198.

5 114. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
6 behalf of themselves and other current or former employees, to bring a civil action to recover civil
7 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

8 115. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
9 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations
10 of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 1174,
11 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

12 A. For violations of California Labor Code § 204, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
14 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
15 (penalty amounts established by California Labor Code § 210).

16 B. For violations of California Labor Code § 221(a), one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
18 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
19 (penalty amounts established by California Labor Code § 225.5).

20 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
21 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
22 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
23 California Labor Code § 226.3).

24 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
25 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
26 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
27 established by California Labor Code § 558).

28 E. For violations of California Labor Code § 1174, five hundred dollars



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1 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
2 amounts established by Labor Code § 1174.5).

3 F. For violations of California Labor Code § 1197, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
5 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
6 (regardless of whether the initial violations were intentionally committed) (penalty amounts
7 established by California Labor Code § 1197.1).

8 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246,
9 246.5, 1194, and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
10 period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee
11 per pay period for each subsequent violation (penalty amounts established by California Labor
12 Code § 2699(f)(2)).

13 116. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated September 20, 2024, Plaintiff filed written notice online
15 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
16 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
17 have been violated, including the facts and theories to support the alleged violations. A true and
18 correct copy of the notice to the LWDA dated September 20, 2024 is attached as Exhibit A.
19 Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed
20 to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
21 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not
22 intend to investigate these allegations.

23 117. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
24 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
25 connection with their claims for civil penalties.

26 **V. PRAYER FOR RELIEF**

27 118. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
28 relief and judgment against Defendants as follows:



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- 1 A. An order that the action be certified as a class action with respect to
2 Plaintiff's claims for violations of California law;
3 B. An order that Plaintiff be appointed class representative;
4 C. An order that counsel for Plaintiff be appointed class counsel;
5 D. Unpaid wages, including minimum, regular, overtime, double-time,
6 missed meal period, and missed rest period wages;
7 E. Liquidated damages;
8 F. Statutory penalties, including waiting time penalties;
9 G. Civil penalties;
10 H. Restitution;
11 I. Declaratory relief;
12 J. Actual damages;
13 K. Pre-judgment interest;
14 L. Costs of suit;
15 M. Reasonable attorneys' fees; and
16 N. Such other relief as the Court deems just and proper.

17 **VI. DEMAND FOR JURY TRIAL**

18 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
19 on all issues so triable.

20
21 Respectfully submitted,

22 THE SPIVAK LAW FIRM

23
24 Dated: December 20, 2024

By:



DAVID G. SPIVAK, Attorney for
Plaintiff(s), JESUS TORRES, and all
others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 20, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jesus Torres / Inland Industrial Solutions, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jesus Torres (hereafter “Torres” or “Complainant”) provides notice that Inland Industrial Solutions, Inc., Inland Guard Services, Inc., Donaciano Cuellar, and related entities (collectively “the Inland Employers” or “the Employers”) violated his rights and those of all other individuals the Inland Employers have employed or otherwise contracted with in California as hourly, non-exempt, including security guards, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 1174, 1194, 1197, 1198, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Torres hereby provides this notice to the Labor & Workforce Development Agency and the Inland Employers and their agents and representatives.

At all relevant times, the Inland Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Torres and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

On approximately December 4, 2023, the Inland Employers began to employ Torres in Compton, CA in the position of hourly, non-exempt Security Guard. The Inland Employers continuously employed him in that capacity until on or about March 22, 2024 when his employment ended.

At all relevant times, the Inland Employers issued wages to Torres and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Inland Employers classified Torres and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Inland Employers failed to pay Torres and the other Aggrieved Employees hourly wages of at least the applicable minimum wage for the City and/or County they worked in. The Inland Employers also failed to pay Torres and the other Aggrieved Employees any wages for time they spent on duty during meal periods.

The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Inland Employers required Torres and the other Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Instead of paying overtime premium wages of time and one half for such work, the Inland Employers paid Torres and the other Aggrieved Employees in cash at their regular rates of pay.

The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Inland Employers required Torres and the other Aggrieved Employees to work in excess of 12 hours per day. Instead of paying doubletime premium wages of time and one half for such work, the Inland Employers paid Torres and the other Aggrieved Employees in cash at their regular rates of pay.

At all relevant times, the Inland Employers failed to provide Torres and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Inland Employers required Torres and the other Aggrieved Employees to clock out for their meal periods though they expected them to remain in duty for such periods. The Inland Employers did not pay Torres and the other Aggrieved Employees for such on-duty periods. The Inland Employers also failed to pay premium wages for days on which they failed to provide Torres and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Inland Employers failed to authorize and permit Torres and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Inland Employers required Torres and the other Aggrieved Employees to remain in duty for their rest periods. The Inland Employers also failed to pay premium wages for days on which they failed to authorize and permit Torres and all of the other Aggrieved Employees to take rest breaks as required by law.

The Inland Employers unlawfully deducted wages belonging to Torres and all of the other Aggrieved Employees. The Inland Employers deducted the time Torres and the other Aggrieved Employees spent in on-duty meal periods from their wages.

At all relevant times, the Inland Employers failed to issue to Torres and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Inland Employers knowingly and intentionally failed to state on the wage statements they issued to Torres and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, the employer's name and address, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and other required information.

The Inland Employers failed to provide Torres and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The Inland Employers also failed to timely pay Torres and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Inland Employers failed to maintain accurate employee records of Torres and all of the other Aggrieved Employees.

For the reasons stated herein, Torres alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Inland Employers failed to pay Torres and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Inland Employers failed to provide paid sick leave to Torres and all of the other Aggrieved Employees;
- (c) The Inland Employers failed to provide Torres and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The Inland Employers failed to authorize and permit Torres and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees at one hour's pay for each day in which the Inland Employers failed to provide them with one or more meal periods as required by law;
- (f) The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees at one hour's pay for each day in which the Inland Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The Inland Employers unlawfully deducted wages belonging to Torres and all of the other Aggrieved Employees;

- (h) The Inland Employers knowingly and intentionally failed to provide Torres and all of the other Aggrieved Employees with accurate and complete wage statements;
- (i) The Inland Employers failed to provide Torres and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (j) The Inland Employers willfully failed to timely pay Torres and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Inland Employers and when their employment ended; and
- (k) The Inland Employers failed to maintain accurate employment records pertaining to Torres and all of the other Aggrieved Employees.

Accordingly, Torres now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Inland Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical, Mechanical, and Similar Occupations” to include

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; doorkeepers; drafters; elevator operators; estimators; editors; graphic arts

technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Inland Employers, Torres, and all of the Aggrieved Employees were covered by the Wage Order because the Inland Employers operated, and Torres, and all of the Aggrieved Employees, worked for the Inland Employers as guards, their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Torres and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Inland Employers failed to pay Torres and the other Aggrieved Employees hourly wages of at least the applicable minimum wage for the City and/or County they worked in. The Inland Employers also failed to pay Torres and the other Aggrieved Employees any wages for time they spent on-duty during meal periods. The Inland Employers required Torres and the other Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Instead of paying overtime premium wages of time and one half for such work, the Inland Employers paid Torres and the other Aggrieved Employees in cash at their regular rates of pay. The Inland Employers required Torres and the other Aggrieved Employees to work in excess of 12 hours per day. Instead of paying doubletime premium wages of time and one half for such work, the Inland Employers paid Torres and the other Aggrieved Employees in cash at their regular rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or

hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mery Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Inland Employers, Torres and all of the other Aggrieved Employees earned during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Inland Employers failed to pay to Torres and all of the other Aggrieved Employees overtime and double time premium pay on such , and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Inland Employers failed to compensate Torres and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Torres now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
 - ...
 - (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The Inland Employers failed to provide Torres and all of the other Aggrieved Employees with paid sick leave.

Accordingly, Torres now seeks civil penalties for these Labor Code violations that the Inland Employers have committed against him and all of the other Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived

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

In relevant part, section 11 of the Wage Order states:

Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

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

At all relevant times, the Inland Employers failed to provide Torres and all of the other Aggrieved Employees with all timely meal periods. The Inland Employers denied Torres and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Inland Employers required Torres and the other Aggrieved Employees to clock out for their meal periods though they expected them to remain in duty for such periods. The Inland Employers did not pay Torres and the other Aggrieved Employees for such on-duty periods. Furthermore, the Inland Employers failed to pay premium wages for days on which they failed to provide Torres and all of the other Aggrieved Employees with timely meal periods. Accordingly, Torres now seeks civil penalties for these Labor Code violations that the Inland Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

The Inland Employers failed to authorize and permit Torres and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Inland Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Inland Employers required Torres and the other Aggrieved Employees to remain in duty for their rest periods. Moreover, the Inland Employers failed to pay Torres and all of the other Aggrieved Employees premium wages on workdays the Inland Employers failed to provide Torres and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Torres now seeks civil penalties for these Labor Code violations that the Inland Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Inland Employers deducted wages from the wages earned by Torres and all of the other Aggrieved Employees for hours spent working or in on-duty meal periods in violation of Labor Code § 221. Accordingly, Torres seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Inland Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Inland Employers failed to state in the wage statements they issued to Torres and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Inland Employers knowingly and intentionally failed to state on the wage statements they issued to Torres and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, the employer's name and address, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and other required information.

Accordingly, Torres seeks civil penalties for the Labor Code violations that the Inland Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The Inland Employers failed to provide Torres and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Torres seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation, at the intervals stated above. As a result, the Inland Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Torres now seeks civil penalties for the Labor Code violations that the Inland Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Inland Employers failed to pay Torres and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Torres, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation. Additionally, the Inland Employers failed to issue to Torres and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Torres and all of the other Aggrieved Employees as set forth above at the end of employment, the Inland Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Torres seeks civil penalties from the Inland Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (a) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation, and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and

total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Inland Employers failed to compensate Torres and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, the employer's name and address, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and related compensation. As a result, the Inland Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Torres and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Torres seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Donaciano Cuellar was an employer of Torres and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Inland Employers and the other employers identified above. Donaciano Cuellar directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Torres seeks the same civil penalties against Donaciano Cuellar on the same grounds for which he seeks civil penalties against the Inland Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Jesus Torres will seek both reasonable attorneys’ fees and costs under Labor Code section 2699(g)(1) in a civil

LWDA / The Inland Employers

Re: Jesus Torres

September 20, 2024

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action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Jesus Torres

Inland Industrial Solutions, Inc.
c/o Agent for service of process

Mr. Carl Butler

Agent for Service of Process, Inland Industrial Solutions, Inc.

336 N La Cadena Dr.

Colton, CA 92324

Mr. Donaciano Cuellar

1283 Leaf Street

Beaumont, CA 92223

Inland Guard Services, Inc.

c/o Agent for service of process

Mr. Carl Butler

Agent for Service of Process, Inland Guard Services, Inc.

336 N La Cadena Dr.

Colton, CA 92324

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1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

On Friday, December 20, 2024, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

INLAND INDUSTRIAL SOLUTIONS, INC.
c/o Carl Butler, Agent for Service of Process
336 N La Cadena Dr.
Colton, CA 92324

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
