Electronically Filed
Superior Court of California
County of San Bernardino
Rancho Cucamonga District
12/27/2024 6:04 PM
By: Gaspar Ambriz Medina, DEPUTY

ALYSSA MILMAN WHITE, ESQ. (SBN 160212)
SARA L. ESCALANTE, ESQ. (SBN 323127)
ANGELO & WHITE
A Professional Corporation
660 Newport Center Drive, Suite 1000
Newport Beach, CA 92660
Telephone: (949) 640-0800
Facsimile: (949) 640-0887

Attorneys for Plaintiff Jeffrey Trauger

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA DISTRICT

JEFFREY TRAUGER, an individual;

Plaintiff,

v.

DIRECT SHOWER DOOR & INSTALLATION, a sole proprietorship; and DOES 1 through 20, inclusive;

Defendant.

Case No. CIVRS2403128

CLAIMS FOR INDIVIDUAL RELIEF AND REPRESENTATIVE CLAIM FOR PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT

CIVIL COMPLAINT FOR:

1. **BREACH OF ORAL AND/OR IMPLIED CONTRACT**
2. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
3. **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**
4. **DEFAMATION**
5. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
6. **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**
7. **FAILURE TO PAY MINIMUM WAGES**
8. **FAILURE TO PAY OVERTIME**
9. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
10. **FAILURE TO PAY TIMELY WAGES IN EMPLOYMENT**

11. FAILURE TO GIVE REST BREAKS
12. FAILURE TO GIVE MEAL BREAKS
13. FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS
14. UNPAID BUSINESS-RELATED EXPENSES
15. INDIVIDUAL AND REPRESENTATIVE CLAIM FOR PAGA PENALTIES
16. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

UNLIMITED JURISDICTION

Plaintiff, JEFFREY TRAUGER, alleges as follows:

PARTIES

1. At all times mentioned herein, Plaintiff JEFFREY TRAUGER ("Plaintiff" or "Mr. Trauger") was and is an individual residing in the state of California.

2. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein Defendant DIRECT SHOWER DOOR & INSTALLATION, which employed Plaintiff, was and is a sole proprietorship, owned by David L DiGiorgio, that engages in the business of selling and installing shower doors with its principal place of business in Upland, California.

3. The true names, capacities and identities, whether individual, corporate or otherwise, of Defendant DOES 1 through 20, inclusive, are presently unknown to Plaintiff or, if known, their involvement in the acts, events and happenings as hereinafter alleged is unknown and, therefore, Plaintiff sues these Defendants, and each of them by such fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each of the DOE Defendants is responsible in some manner for the occurrences alleged and proximately caused or contributed to the injuries and damages alleged. Plaintiff will seek leave of Court to amend this Complaint to state the true names, identities and capacities of such fictitiously named Defendants if and when the same have been ascertained.

4. Plaintiff is informed and believes and thereon alleges that Defendants were at all times mentioned the agents and/or employees of each and every other Defendant and were at all times mentioned acting within the purposes and scope of said agency and/or employment and with the consent, authorization, and ratification of each of the remaining Defendants.

VENUE & JURISDICTION

5. Venue and Jurisdiction are proper in this Court and this action is properly filed in the County of San Bernardino in this judicial district because Defendant DIRECT SHOWER DOOR & INSTALLATION and DOES 1 through 20, inclusive, (collectively "Defendant(s)" or "Direct Shower Door") do business in the County of San Bernardino and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed $35,000.

GENERAL ALLEGATIONS

6. Mr. Trauger worked for Direct Shower Door as an hourly, non-exempt sales associate from about November 2, 2020, to January 2, 2024.

7. Throughout his employment, Mr. Trauger repeatedly received excellent performance reviews from his supervisor and Direct Shower Door's Operations Manager, Donna DiGiorgio ("Ms. DiGeorgio"), in addition to consistent raises as follows: $20/hour as of November 2, 2020; $22/hour as of November 1, 2021; $24/hour as of April 1, 2022; and $26/hour as of November 1, 2022.

8. In late 2022, Mr. Trauger's eight-year-old niece was diagnosed with an inoperable and incurable brain tumor. Throughout 2023, he made a point to bank paid time off hours ("PTO") to use in the case of emergencies related to her unstable medical condition. Mr. Trauger advised Ms. DiGiorgio about his niece's devasting diagnosis, and she confirmed he could use his PTO hours to be with his family when necessary.

9. On or about August 30, 2023, Mr. Trauger submitted a Time Off Request for Thursday, August 31, 2023, to Friday, September 1, 2023, for a family emergency. Specifically, Mr. Trauger's niece slipped into a coma overnight and her medical team predicted she would not survive the weekend.

10. In response to the Time Off Request, Ms. DiGiorgio told Mr. Trauger that he did not provide two weeks' notice. Mr. Trauger reiterated that the situation became emergent overnight, and Ms. DiGiorgio begrudgingly approved the two-day Time Off Request, noting on the approval form that he had ample PTO days remaining.

11. In early October 2023, Ms. DiGiorgio advised Mr. Trauger that Direct Shower Door wanted to promote him to a leadership role. Specifically, she said he would be promoted to a lead sales position where he would manage the other sales associates. Ms. DiGiorgio had the other sales associates start going to Mr. Trauger with questions before contacting her, and she promised that she and Mr. Trauger would discuss the specifics of his promotion in greater detail at his three-year performance review in November of 2023.

12. On or about October 19, 2023, Mr. Trauger submitted a Time Off Request for November 1, 2023, to attend his niece's funeral. In response, Ms. DiGiorgio asked him to work part time that day. Mr. Trauger reiterated that he needed the full day off to attend the funeral, and Ms. DiGiorgio said she was not legally obligated to grant the request because his niece was not a close family relative.

13. Ms. DiGiorgio then referenced another employee whose dog had recently died and stated, "his dog just died, and he was crying about it in the office, but he did not get time off." Mr. Trauger said he felt Ms. DiGiorgio was being hurtful and insensitive given the situation (which is incomparable to the death of a pet). Mr. Trauger further asserted that he gave more than two weeks' advance notice, he had plenty of PTO time available, there were no previous issues with his attendance or performance, and Ms. DiGiorgio was aware of the situation and agreed he could use PTO in connection with his dying niece.

14. Ms. DiGiorgio begrudgingly approved the one-day Time Off Request, noting on the approval form that Mr. Trauger had ten available PTO days remaining.

15. Following the funeral on November 1, 2023, Ms. DiGiorgio became very cold and noncommunicative towards Mr. Trauger. His performance review and promotion discussion that was promised to occur in November of 2023 never happened.

16. From Thursday, December 28, 2023, to Friday, December 29, 2023, Mr. Trauger took two days of approved PTO.

17. On December 28, 2023, while he was out of the office, Ms. DiGiorgio sent Mr. Trauger a text message stating, "I must ask for you to contact me either today or tomorrow as it is urgent I speak with you before the weekend." Mr. Trauger replied that he was out of town, and she could either email him or it would have to wait until he returned to work following the New Year's holiday. Ms. DiGiorgio asked for Mr. Trauger's personal email address, which he provided, but she never sent him an email or subsequent text message.

18. When Mr. Trauger arrived for work on January 2, 2024, he was not able to clock in. He stepped out to call Ms. DiGiorgio and saw her in the parking lot. Mr. Trauger asked why he was not able to clock in and if he was fired. Ms. DiGiorgio said, "yes, didn't you get my text?" Mr. Trauger replied that he did not receive a text message or email, and Ms. DiGiorgio responded that she would send him a text.

19. Mr. Trauger never received any subsequent communication or separation paperwork from Ms. DiGiorgio or Direct Shower Door. The accounting manager gave him a final check, which was dated December 28, 2023.

20. On or about January 7, 2024, Mr. Trauger applied for unemployment insurance. On or about January 30, 2024, Mr. Trauger checked online and learned his claim was denied. He called the Employment Development Department ("EDD") and spoke with Gabriel, who advised that David DiGiorgio and Donna DiGiorgio (the "DiGiorgios") reported that Direct Shower Door fired Mr. Trauger for misconduct. Specifically, the DiGiorgios claimed that Direct Shower Door gave Mr. Trauger multiple warnings throughout his employment about inaccurate work orders before firing him with a written explanation of the termination.

21. These statements are false. During his employment Ms. DiGiorgio told Mr. Trauger that he was the most accurate representative at Direct Shower Door and performed his job as she herself would. Mr. Trauger never received any verbal or written warnings about performance issues or notice that his job was in jeopardy, nor did he receive a verbal or written explanation of

his termination. On the contrary, Mr. Trauger was asked to manage the other sales associates and was promised a promotion.

22. Mr. Trauger subsequently retained counsel, and his attorneys sent Direct Shower Door two letters on January 29, 2024, and March 15, 2024, requesting all records related to Mr. Trauger's employment, including his complete personnel file. Direct Shower Door provided no documentation of any warnings regarding Mr. Trauger's alleged performance issues or the written explanation the DiGiorgios told EDD they provided Mr. Trauger upon his termination.

23. Mr. Trauger appealed the denial of his unemployment claim and the decision was reversed, finding he was not disqualified for benefits and that Direct Shower Door's reserve account was subject to benefit charges.

24. As of February 16, 2024, Mr. Trauger obtained new employment.

ALLEGATIONS REGARDING LABOR CODE VIOLATIONS

25. It is Plaintiff's position that Direct Shower Door has committed numerous labor code violations against Plaintiff and other similarly situated aggrieved employees.

26. Direct Shower Door did not provide Plaintiff and other aggrieved employees with compensation for all hours worked and did not compensate Plaintiff and other aggrieved employees with the minimum wages to which they were entitled for work performed "off the clock," pursuant to California Labor Code section 1194, 1197, and 1197.1. To the extent that Plaintiff and others had to work through their meal breaks while "off the clock", had their meal breaks interrupted, had to work through their rest breaks, and had to work while off duty without being compensated for this time, that would constitute minimum wage violations under California law since they were not paid for all hours worked.

27. Due to the "off the clock" work as alleged above and as a matter of policy, Direct Shower Door violated Labor Code §§ 510 and 1194 because it failed to pay Plaintiff and other similarly situated aggrieved employees' overtime, even though they worked more than 8 hours per day or 40 hours per week throughout their employment. Plaintiff's and others' actual work hours entitled them to overtime compensation, especially due to the "off the clock" allegations above, however, they were not paid for all their overtime hours worked.

28. Direct Shower Door also violated Labor Code § 226.7 and the applicable Industrial Welfare Commission Wage Order No. 7-2001 because it failed to provide Plaintiff and other aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. In fact, it was company policy to specifically not allow Plaintiff and others to take statutory rest breaks. Plaintiff and others were told they could only break for lunch and were required to seek permission from management to use the restroom. Direct Shower Door did not pay Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that statutory rest periods were not provided. It was the normal practice and custom of Direct Shower Door not to authorize, permit, or enforce statutory rest periods. As such, the work environment and culture at Direct Shower Door was not conducive to receiving statutory rest breaks under California law.

29. Direct Shower Door violated Labor Code §§ 226.7 and 512 along with the applicable Industrial Welfare Commission Wage Order No. 7-2001 because it failed to provide Plaintiff and others with the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. Plaintiff and others were required to stagger their meal periods, resulting in meal periods starting after the 5th hour worked. Direct Shower Door did not pay Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that a statutory meal period was interrupted and/or not provided timely. It was the normal practice and custom of Direct Shower Door not to authorize, permit, and enforce statutory meal periods. As such, the work environment and culture at Direct Shower Door was not conducive to receiving statutory meal breaks under California law.

30. Furthermore, during the relevant time period, and due to the above allegations, Direct Shower Door failed to pay Plaintiff and others all wages due to them within any time period specified by California Labor Code section 204.

31. Direct Shower Door was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, all hours worked, gross wages earned, net wages earned, total pay, the correct legal name and address of the employing entity, the inclusive dates of the period for which the employee is paid,

all applicable hourly rates, itemized deductions, premium pay for the missed meal and rest breaks, and business expense reimbursement, among others. Accordingly, Direct Shower Door did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

32. During the relevant time period, Direct Shower Door also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code sections 226 and 1174(d). For example, Direct Shower Door had knowledge it was not providing Plaintiff and others with statutory meal and rest breaks; nevertheless, Direct Shower Door knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not permitted. In addition, Direct Shower Door knew they were not compensating their employees for all hours worked, yet the Company knowingly failed to include this time worked in the regular rate of pay of Plaintiff and others. As a result, Plaintiff and others have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and others must look to sources outside of the wage statements and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

33. Direct Shower Door also violated Labor Code sections 201, 202, and 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. After Plaintiff's employment with Direct Shower Door ended, Direct Shower Door failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include compensation for all hours worked/minimum wages, overtime compensation, and penalties/premium pay for missed meal and rest breaks, among other things.

34. Direct Shower Door also violated Labor Code section 223 because, for example, it willfully and systematically failed to provide compliant statutory meal and rest periods without paying the appropriate meal and rest period premiums. In doing so, Direct Shower Door acted

with the intent to deprive Plaintiff and others of the statutory wages to which they were entitled under California law. Accordingly, Direct Shower Door paid Plaintiff and others lower wages than those they were entitled to while purporting that Plaintiff and others were properly paid.

35. Direct Shower Door also violated Labor Code section 2802 by requiring Plaintiff and other aggrieved employees to use their personal mobile devices and mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related business expenses. For example, employees who worked in the field as measuring technicians and installers would regularly call and text message Plaintiff on his personal mobile device to obtain information regarding measurements and other order details. As another example, Plaintiff and others used their personal mobile devices to scan paperwork orders to Direct Shower Door during the regular course of business. Although Direct Shower Door required Plaintiff and others to use their personal mobile devices and data to carry out work-related duties, Direct Shower Door failed to reimburse them for the costs incurred. Thus, there was a company-wide practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802.

36. Direct Shower Door also violated California's Wage Theft Prevention Act, Labor Code section 2810.5, by failing to provide Plaintiff and other aggrieved employees with written notice at the time of hiring of the rate(s) of pay and basis thereof (whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime), the regular payday designated by the employer, and a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrue paid sick leave; and has the right to file a complaint against an employer who retaliates. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

///

///

///

///

FIRST CAUSE OF ACTION

(FOR BREACH OF ORAL AND/OR IMPLIED CONTRACT)

(By Plaintiff Against Defendant & Does 1-20)

37. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

38. Plaintiff and Defendant entered an oral and/or implied contract to promote Plaintiff and to not terminate him without good cause.

39. Plaintiff did all, or substantially all, of the significant things that the contract required him to do, including stepping into a management role over the other sales associates before officially being promoted.

40. Defendant failed to do something that the contract required and/or that the contract prohibited.

41. Plaintiff was harmed.

42. Defendant's breach of contract was a substantial factor in causing Plaintiff's harm.

43. As a result of Defendant's aforementioned conduct, Plaintiff is entitled to compensatory damages in an amount to be proven according to proof at trial, plus interest thereon from the earliest date and at the highest rate allowed by law.

SECOND CAUSE OF ACTION

(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY)

(By Plaintiff Against Defendant & Does 1-20)

44. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

45. An employment relationship existed between Plaintiff and Defendant.

46. Defendant terminated the employee.

47. Defendant's reason for termination violated public policy and was a substantial motivating reason for the termination.

48. As one example, and as additionally described above, Defendant started a retaliation campaign against Plaintiff after he requested to use available PTO to attend his eight-year-old

niece's funeral. Defendant particularly took issue when Plaintiff indicated it was insensitive to compare the tragic and untimely death of a little girl to another employee's dog. Defendant treated Plaintiff differently after that, shunned him, ignored him, denied his promised promotion and ultimately fired him while he was using PTO without notice or explanation.

49. Plaintiff suffered damages as a result of the termination.

50. As a result of Defendant's aforementioned conduct, Plaintiff is entitled to compensatory damages, the amount of which is to be determined according to proof at the time of trial, plus interest thereon from the earliest date and at the highest rate allowed by law and attorney's fees and costs.

51. In addition, as described above, Defendant's acts were committed with oppression, fraud, and malice within the meaning of Civil Code section 3294. As a result, in addition to actual damages, Plaintiff may recover exemplary damages for the sake of example and by way of punishing Defendant.

THIRD CAUSE OF ACTION

(RETALIATION IN VIOLATION OF LABOR CODE § 1102.5)

(By Plaintiff Against Defendant & Does 1-20)

52. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

53. An employment relationship existed between Plaintiff and Defendant.

54. Labor Code section 1102.5 subsection (a) prohibits an employer, or any person acting on behalf of the employer, from making or enforcing a rule, regulation, or policy preventing an employee from disclosing information to a government agency or to a person with authority over the employee if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation of or noncompliance with a local, state, or federal rule or regulation.

55. Labor Code section 1102.5 subsection (b) prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a

government or law enforcement agency, or to a person with authority over the employee if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

56. Labor Code section 1102.5 subsection (d) prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for having exercised their rights under subsections (a) or (b) or in any former employment.

57. Defendant's conduct violated subsection (a) because Defendant enforced a policy preventing Plaintiff from disclosing information that Plaintiff believed constituted a violation of law to a government agency and/or a person with authority over Plaintiff.

58. Defendant's conduct violated subsection (b) because Defendant retaliated against Plaintiff for disclosing information that Plaintiff believed constituted a violation of law to a government agency and/or person with authority over Plaintiff.

59. Defendant's conduct violated subsection (d) because Defendant retaliated against Plaintiff by unfair treatment, denial of a promised promotion, termination, and an unsuccessful attempt to deny his claim for unemployment benefits.

60. Plaintiff's attempts to disclose this information were the motivating factor in Defendant's decision to terminate Plaintiff's employment.

61. Plaintiff suffered harm, including injury to his business and professional reputation, as well as embarrassment, humiliation, and anguish.

62. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

63. As a result of Defendant's aforementioned conduct, Defendant is entitled to compensatory damages, the amount of which is to be determined according to proof at the time of trial, plus interest thereon from the earliest date and at the highest rate allowed by law.

64. As a result of Defendant's aforementioned conduct, Plaintiff is entitled to compensatory damages, the amount of which is to be determined according to proof at the time of trial, plus interest thereon from the earliest date and at the highest rate allowed by law and attorney's fees and costs pursuant to Labor Code section 1102.5 subsection (j).

65. In addition, as described above, Defendant's acts were committed with oppression, fraud, and malice within the meaning of Civil Code section 3294. As a result, in addition to actual damages, Plaintiff may recover exemplary damages for the sake of example and by way of punishing Defendant.

FOURTH CAUSE OF ACTION

(DEFAMATION)

(By Plaintiff Against Defendant & Does 1-20)

66. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

67. Defendant made one or more written and oral statements to a person other than Plaintiff, including to EDD agents.

68. The people, including EDD agents, reasonably understood that the statements were specifically about Plaintiff.

69. The people, including EDD agents, reasonably understood the statements to mean that Plaintiff was fired for misconduct and poor job performance.

70. These statements were and are false, and Defendant knew the statements were false and/or had serious doubts about the truth of the statements.

71. Plaintiff was harmed.

72. Defendant's wrongful conduct was a substantial factor in causing Plaintiff's harm.

73. As a result of Defendant's aforementioned conduct, Plaintiff is entitled to actual damages including, but not limited to, harm to Plaintiff's property, business, trade, profession, and occupation, expenses paid as a result of the defamatory statements, harm to Plaintiff's reputation, and sham, mortification, and hurt feelings, the amount of which is to be determined according to proof at the time of trial, plus interest thereon from the earliest date and at the highest rate allowed by law.

74. In addition, as described above, Defendant's acts were committed with oppression, fraud, and malice within the meaning of Civil Code section 3294. As a result, in addition to actual

damages, Plaintiff may recover exemplary damages for the sake of example and by way of punishing Defendant.

FIFTH CAUSE OF ACTION

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

(By Plaintiff Against Defendant & Does 1-20)

75. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

76. Defendant's conduct described herein was outrageous.

77. Defendant intended to cause Plaintiff emotional distress and/or Defendant acted with reckless disregard of the probability that Plaintiff would suffer emotional distress.

78. Plaintiff suffered severe emotional distress, including suffering, anguish, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

79. Defendant's conduct was a substantial factor in causing Plaintiff's severe emotional distress.

80. As a result of Defendant's aforementioned conduct, Defendant is entitled to compensatory damages, the amount of which is to be determined according to proof at the time of trial, plus interest thereon from the earliest date and at the highest rate allowed by law.

81. In addition, as described above, Defendant's acts were committed with oppression, fraud, and malice within the meaning of Civil Code section 3294. As a result, in addition to actual damages, Plaintiff may recover exemplary damages for the sake of example and by way of punishing Defendant.

SIXTH CAUSE OF ACTION

(FAILURE TO COMPENSATE FOR ALL HOURS WORKED)

(California Industrial Welfare Commission Order 7-2001 &

California Labor Code § 1198)

(By Plaintiff Against Defendant & Does 1-20)

82. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

83. At all times relevant herein, Defendant was required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission ("IWC") Order 7-2001.

84. Defendant failed to compensate Plaintiff for all hours worked.

85. Under the aforementioned wage order, Plaintiff is to recover compensation for all hours worked but not paid by Defendant.

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

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

88. Under this cause of action, Plaintiff prays for damages, penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs.

SEVENTH CAUSE OF ACTION

(FAILURE TO PAY MINIMUM WAGES)

(IWC Order 7-2001 & California Labor Code §§ 1194, 1194.2, 1197)

(By Plaintiff Against Defendant & Does 1-20)

89. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

90. Pursuant to Labor Code Section 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable IWC Order No. 7-2001.

91. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendant and Plaintiff was paid less than the minimum wage rate by Defendant for hours worked in violation of Labor Code section 1197 and the applicable IWC Order.

92. Plaintiff was, at all relevant times, under the control of Defendant and suffered or permitted to work by Defendant. Defendant's acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendant to believe that their acts or omissions were not contrary to California law.

93. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labord Code Section 1194.2(a), liquidated damages in an amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also entitled to attorney's fees, costs and interest according to proof.

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

EIGHTH CAUSE OF ACTION

(FAILURE TO PAY OVERTIME)

(IWC Order 7-2001 & California Labor Code §§ 510, 1194)

(By Plaintiff Against Defendant & Does 1-20)

95. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

96. Pursuant to California Labor Code sections 510 and 1194 and the applicable IWC Wage Order, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

97. Plaintiff was a non-exempt employee entitled to the above protections.

98. Defendant did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past eight in a day.

99. Defendant did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past forty in a week.

100. Plaintiff worked at least one pay period in which he was not properly paid overtime.

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

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

103. Pursuant to California Labor Code section 218.6, 510, and 1194, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

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

NINTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE & ITEMIZED WAGE STATEMENTS)

(IWC Order 7-2001 & California Labor Code § 226)

(By Plaintiff Against Defendant & Does 1-20)

105. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

106. Labor Code section 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (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.

107. Defendant knowingly and intentionally did not furnish Plaintiff with paystubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, net wages earned, total hours worked, and premium pay for missed meal breaks and rest breaks. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with labor Code section 226(a).

108. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars ($4,000), plus costs and reasonable attorney's fees.

109. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial.

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

TENTH CAUSE OF ACTION

(FAILURE TO PAY TIMELY WAGES IN EMPLOYMENT)

(California Labor Code § 204)

(By Plaintiff Against Defendant & Does 1-20)

111. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

112. California Labor Code section 204 requires that all wages earned by any person in any employment between the lst and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month,

other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

114. Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours and the minimum wage along with premiums for missed meal breaks and rest breaks.

115. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period.

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

ELEVENTH CAUSE OF ACTION

(FAILURE TO GIVE REST BREAKS)

(IWC Wage Order No. 7-2001 and California Labor Code § 226.7)

(By Plaintiff Against Defendant & Does 1-20)

117. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

118. The California Labor Code and applicable IWC Wage Order require employers to provide rest periods and to pay an employee one additional hour of pay at the employee's regular rate for each workday that a rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

119. The applicable IWC Wage Order, Section 12 provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period shall be based on total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

120. Plaintiff was not authorized or permitted to take a ten-minute rest break after every four hours of work or major fraction thereof, as required by California law.

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

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

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

TWELFTH CAUSE OF ACTION

(FAILURE TO GIVE MEAL BREAKS)

(IWC Wage Order No. 7-2001 and California Labor Code §§ 226.7 and 512)

(By Plaintiff Against Defendant & Does 1-20)

124. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

125. California Labor Code sections 226.7, 512, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512 and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30)

minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

126. Plaintiff was not authorized or permitted to take all relieved meal breaks after five hours of work as required by California law.

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

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

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

THIRTEENTH CAUSE OF ACTION

(FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS)

(California Labor Code §§ 201, 202, 203)

(By Plaintiff Against Defendant & Does 1-20)

130. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

131. Pursuant to Labor Code sections 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation.

132. Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

133. Pursuant to Labor Code section 202, an employer is required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (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.

134. Labor Code section 203 provides that if an employer willfully fails to pay, in accordance with Labor Code sections 201 and 202, any wages of an employee who is discharged

or quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

135. After Plaintiff's employment with Defendant ended, Defendant willfully refused and continues to refuse to pay him unpaid wages as required by Labor Code Section 203.

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

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

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

FOURTEENTH CAUSE OF ACTION

(UNPAID BUSINESS-RELATED EXPENSES)

(California Labor Code § 2802)

(By Plaintiff Against Defendant & Does 1-20)

139. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

140. California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees.

141. During Plaintiff's employment, Defendant required Plaintiff to use his personal mobile device and mobile data to carry out his job duties but failed to reimburse Plaintiff for the costs of these business-related expenses in violation of Labor Code section 2802.

142. Under this cause of action, Plaintiff is entitled to recover his business-related expenses incurred during the course and scope of his employment plus interest, costs, and reasonable attorney's fees.

FIFTEENTH CAUSE OF ACTION

(INDIVIDUAL AND REPRESENTATIVE CLAIM FOR PAGA PENALTIES)

(California Labor Code §§ 2698, *et seq.*)

(By Plaintiff Against Defendant & Does 1-20)

143. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

144. Pursuant to California law, on or about September 9, 2024, Plaintiff provided the required written notice to the LWDA and Defendant of the specific violations of the California Labor Code that Defendant and DOE Defendants have violated and continue to violate.

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

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

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

148. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former hourly, non-exempt employees who worked for Defendant during the relevant PAGA period.

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

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

151. California Labor Code section 2698, *et seq.* ("PAGAP") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5.

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

153. Plaintiff seeks penalties for Defendant's misconduct as alleged herein as permitted by law.

154. Specifically, Defendant's conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

a. Violation of Labor Code sections 510 and 1198 and the applicable IWC Wage Order for Defendant's failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;

b. Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendant's failure to compensate Plaintiff and other aggrieved employees with at leas minimum wages for all hours worked, as alleged herein;

c. Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendant's failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;

d. Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendant's failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;

e. Violation of Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;

f. Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;

g. Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;

h. Violation of Labor Code Section 204 for failure to pay all earned wages during employment, as alleged herein;

i. Violation of Labor Code section 223 for secretly paying Plaintiff and other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as alleged herein;

j. Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to pay reporting time pay to Plaintiff and other aggrieved employees, as alleged herein;

k. Violation of Labor Code section 2802 for failure to reimburse plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

l. Violation of Labor Code section 2810.5 for failure to provide written notice of information material to Plaintiff's and other aggrieved employees' employment with Defendant, as alleged herein.

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

SIXTEENTH CAUSE OF ACTION

(VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200)

(By Plaintiff Against Defendant & Does 1-20)

156. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every allegation contained in all prior paragraphs as though fully set forth at length herein.

157. By virtue of the forgoing, the acts of Defendant constitute unfair and unlawful business practices under California Business and Professions Code section 17200, *et seq.*

158. Defendant's violations of California labor laws constitute a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and others.

159. Plaintiff has suffered damages and requests damages and/or restitution of all monies and profits to be disgorged from Defendant in an amount according to proof at time of trial, but in excess of the jurisdiction of this court.

DEMAND FOR JURY TRIAL

160. Plaintiff hereby demands trial by jury of this action.

PRAYER

Plaintiff prays for judgment against Defendant and each of DOES 1-20 as follows:

161. For actual and compensatory damages damage including lost past and future wages, overtime, and all other sums of money, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;

162. For general, special, and consequential damages to the extent allowed by law;

163. For punitive damages as to Plaintiff's second, third, fourth, and fifth causes of action;

164. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;

165. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;

166. For damages and penalties pursuant to Labor Code section 2802 against Defendants in an amount subject to proof at trial;

167. For one hour of wages due to Plaintiff for each work period of more than five hours where Plaintiff did not receive a timely, uninterrupted thirty-minute meal period;

168. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half hours when Plaintiff did not receive an uninterrupted ten-minute rest period.

169. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;

170. For the imposition of civil and/or statutory penalties;

171. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant pursuant to the PAGA claims;

172. For reasonable attorney's fees where available by law, including, but not limited to, pursuant to the California Labor Code, PAGA, and/or other applicable laws;

173. For restitution and disgorgement for all unfair business practices by Defendant against Plaintiff in an amount according to proof;

174. For an order enjoining Defendant from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, *et seq.*;

175. For costs and expenses of suit incurred here;

176. For all interest at the highest rate and from the earliest time as allowed by law; and

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

Dated: December 27, 2024

ANGELO & WHITE

By: _____
ALYSSA MILMAN WHITE, ESQ.
SARA L. ESCALANTE, ESQ.
Attorneys for Plaintiff,
JEFFREY TRAUGER