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on behalf of himself and others similarly situated

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County of San Bernardino
Rancho Cucamonga District
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

IVAN MICAH PROKOPOVICH, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

CALIFORNIA DISTRIBUTION CENTER,
LLC, a California limited liability company;
OASIS OUTSOURCING, LLC, a Florida
corporation; HR OUTSOURCING, LLC, a
Florida corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVRS2401887

CLASS ACTION

Assigned for All Purposes To:
Hon. Kory Matthewson
Dept.: R12

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
7. Penalties Pursuant to Labor Code § 203;
8. Violation of Business & Professions Code § 17200 *et seq.*
9. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff IVAN MICAH PROKOPOVICH, (hereinafter “Plaintiff”) on behalf of himself
2 and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains
3 of Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all similarly situated current
6 and former employees within the State of California who, at any time four (4) years prior to the
7 filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants
8 CALIFORNIA DISTRIBUTION CENTER, LLC, a California Limited Liability Company,
9 OASIS OUTSOURCING, LLC, a Florida corporation; HR OUTSOURCING, LLC, a Florida
10 corporation, and DOES 1 through 50 (all defendants being collectively referred to herein as
11 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
12 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
13 California Business & Professions Code, and seeks redress.

14 2. Plaintiff is a resident of California and during the time period relevant to this
15 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
16 California at Defendants’ facilities and offices in Chino, California. Plaintiff and the other Class
17 members worked for Defendants in San Bernardino County and throughout California, and
18 consistently worked at Defendants’ behest without being paid all wages due. More specifically,
19 Plaintiff and the other similarly situated Class members were employed by Defendants and
20 worked at Defendants’ offices and other facilities where the conduct giving rise to the allegations
21 in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by
22 Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same
23 policies and practices, and (3) endured similar violations at the hands of Defendants as the other
24 Employee Class members who served in similar and related positions.

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
26 and to perform work and remain under Defendants’ control during their meal and rest breaks,.
27 Defendants also failed to provide Plaintiff and the Class with lawful meal periods and failed to
28 authorize and permit them to take all required rest breaks, as Employees were not provided with

1 the opportunity to take uninterrupted and duty-free rest breaks and meal breaks or Defendants
2 failed to timely provide them as required by the Labor Code and applicable IWC Wage Orders.
3 Plaintiff and the Class members were also compelled to clock out for meal periods and return to
4 work off the clock or to otherwise work through meal periods and rest breaks while remaining
5 under Defendants' control due to the difficult work requirements and management demands
6 placed upon them. Defendants thus failed to pay Plaintiff and the Class members for all hours
7 worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class
8 from learning of these unlawful pay practices.

9 **THE PARTIES**

10 **A. The Plaintiff**

11 4. Plaintiff IVAN MICAH PROKOPOVICH has resided in California and during the
12 time period relevant to this Complaint was employed by Defendants as a non-exempt hourly
13 employee within the State of California at Defendants' facilities and offices in Chino, California.

14 **B. The Defendants**

15 5. Defendant CALIFORNIA DISTRIBUTION CENTER ("CDC") is a California
16 limited liability company with its principle executive offices in West Long Branch, New Jersey,
17 and has been listed as the employer on Plaintiff's paystubs during the relevant time period. CDC
18 lists an address in California address in West Long Branch, New Jersey with the California
19 Secretary of State, and employs Plaintiff and the Class members in San Bernardino County,
20 including at Defendants' offices and facilities in Chino, California, and throughout California and
21 Defendants conduct business throughout California.

22 6. Defendant OASIS OUTSOURCING, LLC ("OO") is a Florida corporation with its
23 principle executive offices in West Palm Beach, Florida, and has been listed as the employer on
24 Plaintiff's paystubs during the relevant time period. OO lists an address in Florida address in West
25 Palm Beach, Florida with the California Secretary of State, and employs Plaintiff and the Class
26 members in San Bernardino County, including at Defendants' offices and facilities in Chino,
27 California, and throughout California and Defendants conduct business throughout California.

28 7. Defendant HR OUTSOURCING, LLC ("HO") is a Florida corporation with its

1 principle executive offices in West Palm Beach, Florida, and has been listed as the employer on
2 Plaintiff's paystubs during the relevant time period. HO lists an address in Florida address in West
3 Palm Beach, Florida with the California Secretary of State, and employs Plaintiff and the Class
4 members in San Bernardino County, including at Defendants' offices and facilities in Chino,
5 California, and throughout California and Defendants conduct business throughout California.

6 8. Additionally, under California Labor Code § 2810.3, CDC shares with OO and HO,
7 and any other staffing agency it uses, in civil legal responsibility for all workers supplied to BIO
8 for their collective failure to pay all earned wages. California Labor Code § 2810.3 requires that
9 "A client employer shall share with a labor contractor all civil legal responsibility and civil
10 liability for all workers supplied by that labor contractor for...the payment of wages." A "labor
11 contractor" (here, OO and HO), is defined as "an individual or entity that supplies, either with or
12 without a contract, a client employer with workers to perform labor within the client employer's
13 usual course of business." "Client employer" (here CDC) is defined as "a business entity,
14 regardless of its form, that obtains or is provided workers to perform labor within its usual course
15 of business from a labor contractor." Upon information and belief, Defendant CDC is and has been
16 a client employer within the definition of Labor Code § 2810.3 and shares with OO and HO, the
17 labor contractor, all civil legal responsibility and civil liability for failure to pay all wages earned
18 by Plaintiff and the Class Members.

19 9. The true names and capacities, whether individual, corporate, associate, or
20 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
21 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
22 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
23 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
24 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
25 this Complaint to reflect the true names and capacities of the Defendants designated herein as
26 Does 1 through 50 when their identities become known.

27 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried

1 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
2 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
3 all respects as the employers or joint employers of Employees. Defendants, and each of them,
4 exercised control over the wages, hours or working conditions of Employees, or suffered or
5 permitted Employees to work, or engaged, thereby creating a common law employment
6 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
7 employed Employees.

8 **JURISDICTION AND VENUE**

9 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
11 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
12 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
13 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
14 obligations and liabilities giving rise to this lawsuit occurred at least in part in San Bernardino
15 County and Defendants maintain and operate company offices and facilities in San Bernardino
16 County, and employ Plaintiff and other Class members in San Bernardino County and throughout
17 California.

18 **FACTUAL BACKGROUND**

19 12. The Employees who comprise the Class, including Plaintiff, are nonexempt
20 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
21 work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff
22 and the Class members were either not paid by Defendants for all hours worked or were not paid
23 at the appropriate overtime rates. Specifically, Defendants required Employees to work “pre-shift”
24 and “post-shift”, in excess of their scheduled shifts for which they were not paid wages as
25 Employees were required to spend working hours under the control of Defendants by Employees
26 and were not compensated for this time.

27 13. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class
28 members all wages due and owing, failed to provide meal and rest breaks, and failed to furnish

1 accurate wage statements, all in violation of various provisions of the California Labor Code and
2 applicable Wage Order provisions.

3 14. During the course of Plaintiff and the Class members' employment with
4 Defendants, they were not paid all wages they were owed, including for all work performed and
5 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
6 keep labor budgets low.

7 15. As a matter of uniform and unlawful Company policy, Plaintiff and the Class
8 members were required to work during their meal periods and rest breaks, and they were again
9 not compensated for this off the clock work, in violation of the California Labor Code. Plaintiff
10 and the Class members were also not paid regular wages and overtime for the time they were
11 required to comply with other work demands and requirements imposed upon them, which they
12 often had to complete while working through their meal and rest breaks and without
13 compensation. As a result Plaintiff and the Class members worked shifts over eight (8) hours in a
14 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime
15 rate for all such hours, including by being required to perform work duties and tasks without pay
16 and while off-the-clock which caused overtime to begin accruing before it did in Defendants'
17 timekeeping and payroll systems. As a result, Plaintiff and the Class members worked substantial
18 overtime hours during their employment with Defendants for which they were not compensated,
19 in violation of the California Labor Code and applicable IWC Wage Orders.

20 16. As a result of the above, the failure to calculate and pay wages at the correct rates,
21 the daily work demands and pressures to work through breaks, and the other wage violations they
22 endured at Defendants' hands, Plaintiff and the Class members were not properly paid for all
23 wages earned and for all wages owed to them by Defendants, including when working more than
24 eight (8) hours in any given day and/or more than forty (40) hours in any given week. As a result
25 of Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime
26 hours worked for which they were not adequately and completely compensated, in addition to the
27 hours they were required to work off the clock. To the extent applicable, Defendants also failed to
28 pay Plaintiff and the Class members at an overtime rate of 1.5 times the regular rate for the first

1 eight hours of the seventh consecutive work day in a week and overtime payments at the rate of 2
2 times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as
3 required under the Labor Code, applicable IWC Wage Orders.

4 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and
5 continuing to the present, Defendants had a consistent policy or practice of failing to pay
6 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
7 by California Law.

8 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
9 continuing to the present, Defendants had a consistent policy or practice of failing to pay
10 Employees overtime compensation at premium overtime rates for all hours worked in excess of
11 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
12 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
13 sections of IWC Wage Orders.

14 19. Additionally, from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants have regularly required Employees to work shifts in excess
16 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
17 (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal
18 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
19 hour of wages at each Employee’s effective hourly rate of pay, for each meal period that
20 Defendants failed to provide or deficiently provided.

21 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
22 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
23 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
24 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
25 provided or were deficiently provided.

26 21. Additionally from at least four (4) years prior to the filing of this lawsuit, and
27 continuing to the present, Defendants have consistently failed to provide Employees with timely,
28 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

22. Additionally from at least three (3) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

23. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq*, and 2810.3.

25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

26. Plaintiff brings this class action on behalf of himself an all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: “All individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, as non-exempt, hourly employees within the State of California.

27. Further, plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

1 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
2 Defendants' policy and/or practice of failing to authorize and permit Employees to take
3 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
4 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

5 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to
6 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
7 by California wage-and-hour laws.

8 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
9 applicable limitations period, were not provided with accurate itemized wage statements.

10 g. Subclass 7. Termination Pay Subclass. All Class members who, within the
11 applicable limitations period, either voluntarily or involuntarily separated from their employment
12 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
13 termination.

14 h. Subclass 8. UCL Subclass. All Class members who are owed restitution as a
15 result of Defendants' business acts and practices, to the extent such acts and practices are found to
16 be unlawful, deceptive, and/or unfair.

17 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
18 modify the class description with greater particularity or further division into subclasses or
19 limitation to particular issues.

20 29. This action has been brought and may properly be maintained as a class action
21 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
22 of interest in litigation and proposed class is easily ascertainable.

23 **A. Numerosity**

24 30. The potential members of the class as defined are so numerous that joinder of all
25 the member of the class is impracticable. While the precise number of class member has not been
26 determined at this time, Plaintiff is informed and believes that, during the time period relevant to
27 this lawsuit, Defendants employed more than 100 individuals within the State of California.

28 31. Accounting for employee turnover during the relevant time period increases this

number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

32. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- f. Whether Defendants failed to keep required payroll records under Labor Code §§ 1174 and 1174.5;
- g. Whether Defendants violated Labor Code § 226(a);
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- j. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*; and
- j. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*;

C. Typicality

33. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common

1 course of conducts in violation of statutes, as well as regulations that have the force and effect of
2 law, as alleged herein.

3 **D. Adequacy of Representation**

4 34. Plaintiff will fairly and adequately represent and protect the interest of Employees.
5 Counsel who represents Employees are experienced and competent in litigating employment class
6 actions.

7 **E. Superiority of Class Action**

8 35. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
10 questions of law and fact common to all Employees predominate over any questions affecting only
11 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
12 Defendants' illegal policies or practices of failing to compensate Employees properly.

13 36. Class action treatment will allow those persons similarly situated to litigate their
14 claims in the manner that is most efficient and economical for the parties and the judicial system.
15 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Against All Defendants)**

19 37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 38. Defendants failed to pay Employees minimum wages for all hours worked.
22 Defendants had a consistent policy of misstating Employees time records and failing to pay
23 Employees for all hours worked. Specifically, Defendants had a consistent policy of failing to
24 pay Employees for hours worked during alleged meal periods for which Employees were
25 consistently denied. (see infra). Defendants also required Employees to work "pre-shift" and
26 "post-shift", in excess of their scheduled shifts for which they were not paid wages as Employees
27 were required to spend working hours under the control of Defendants by picking up boxes prior
28 to clocking. Employees would also have to have to close all warehouse doors and container doors

1 and shut down all machinery after clocking out. California Labor Code § 1197, entitled “Pay of
2 Less Than Minimum Wage” states:

3 The minimum wage for employees fixed by the commission is the
4 minimum wage to be paid to employees, and the payment of a less
 wage than the minimum so fixed is unlawful.

5 39. The applicable minimum wages fixed by the commission for work during the
6 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
7 therefore entitled to double the minimum wage during the relevant period.

8 40. The minimum wage provisions of California Labor Code are enforceable by private
9 civil action pursuant to California Labor Code § 1194(a) which states:

10 Notwithstanding any agreement to work for a lesser wage, any
11 employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to
13 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.

14 41. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
15 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

16 42. California Labor Code § 1194.2 also provides for the following remedies:

17 In any action under Section 1194 . . . to recover wages because of
18 the payment of a wage less than the minimum wages fixed by an
19 order of the commission, an employee shall be entitled to recover
 liquidated damages in an amount equal to the wages unlawfully
 unpaid and interest thereon.

20 43. Defendants have the ability to pay minimum wages for all time worked and have
21 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
22 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

23 44. Wherefore, Employees are entitled to recover the unpaid minimum wages
24 (including double minimum wages), liquidated damages in an amount equal to the minimum
25 wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit
26 pursuant to California Labor Code § 1194(a).

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2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

4 **(Against All Defendants)**

5 45. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 46. By their conduct, as set forth herein, Defendants violated California Labor Code §
8 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
9 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
10 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
11 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
12 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
13 (8) hours on any seventh day of work in a workweek.

14 47. Defendants had a consistent policy of not paying Employees wages for all hours
15 worked including time Employees were consistently required to work “pre-shift” and “post-shift”
16 hours, in excess of their eight-hour shift in a given work day as Employees had to clean boxes
17 prior to clocking. Employees would also have to have to close all warehouse doors and container
18 doors and shut down all machinery after clocking out. Employees were often not properly
19 compensated, nor were they paid overtime rates for all hours worked in excess of eight hours in a
20 given day, and/or forty hours in a given week.

21 48. Defendants’ failure to pay compensation in a timely fashion also constituted a
22 violation of California Labor Code § 204, which requires that all wages shall be paid
23 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
24 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
25 and overtime compensation earned by Employees. Each such failure to make a timely payment of
26 compensation to Employees constitutes a separate violation of California Labor Code § 204.

27 49. Employees have been damaged by these violations of California Labor Code §§
28 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

1 50. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
2 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
3 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
4 reasonable attorneys' fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

7 **(Against All Defendants)**

8 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 52. Employees regularly worked shifts greater than five (5) hours and greater than ten
11 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
12 more than five (5) hours without providing him or her with a meal period of not less than thirty
13 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
14 meal period of not less than thirty (30) minutes.

15 53. Defendants failed to provide Employees with meal periods as required under the
16 Labor Code. Employees were consistently required to work through their meal periods which they
17 were consistently denied. Employees were also required to take meal periods after working well
18 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
19 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
20 period as required by law.

21 54. Moreover, Defendants failed to compensate Employees for each meal period not
22 provided or inadequately provided, as required under Labor Code § 226.7.

23 55. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
24 an amount equal to one (1) hour of wages at their effective regular rates of pay for each meal
25 period not provided or deficiently provided, a sum to be proven at trial.

26 **FOURTH CAUSE OF ACTION**

27 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

28 **(Against All Defendants)**

1 56. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
2 full herein.

3 57. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
4 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
5 not less than ten (10) minutes for each consecutive four (4) hour shift.

6 58. Defendants failed to provide Employees with timely rest breaks of not less than ten
7 (10) minutes for each consecutive four (4) hour shift.

8 59. Moreover, Defendants did not compensate Employees with an additional hour of
9 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
10 with adequate rest breaks, as required under Labor Code § 226.7.

11 60. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
12 an amount equal to one (1) hour of wages at their effective regular rates of pay for each day
13 worked without the required rest breaks, a sum to be proven at trial.

14 **FIFTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 226(a)**
16 **(Against All Defendants)**

17 61. California Labor Code § 226(a) requires an employer to furnish each of his or her
18 employees with an accurate, itemized statement in writing showing the gross and net earnings,
19 total hours worked, and the corresponding number of hours worked at each hourly rate; these
20 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
21 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
22 statements may be given to the employee separately from the payment of wages; in either case the
23 employer must give the employee these statements twice a month or each time wages are paid.

24 62. Defendants failed to provide Employees with accurate itemized wage statements in
25 writing, as required by the Labor Code. Specifically, the wage statements do not show the
26 overtime rate, a wage statement is provided along with an additional document that contains the
27 daily and weekly hours and overtime (this information is not on the wage statement), and the wage
28 statements show the start date of the pay period is the same as the end date. Additionally, the wage

1 statements given to Employees by Defendants failed to accurately account for wages, overtime,
2 and premium pay for deficient meal periods and rest breaks, all of which Defendants knew or
3 reasonably should have known were owed to Employees, as alleged hereinabove.

4 63. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
5 Employees suffered injuries, including among other things confusion over whether they received
6 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
7 forcing them to make mathematical computations to analyze whether the wages paid in fact
8 compensated them correctly for all hours worked.

9 64. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
10 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
11 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
12 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
13 award of costs and reasonable attorneys' fees.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

16 **AND 1174.5**

17 **(Against All Defendants)**

18 65. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
19 full herein.

20 66. California Labor Code § 1174 requires that all employers shall keep accurate time
21 and wage records for all employees. California Labor Code § 1174.5 further requires that any
22 employee suffering injury due to a willful violation of the aforementioned obligations may seek
23 damages, including civil penalties, from the employer.

24 67. During the course of Plaintiff's and Employees' employment, Defendants
25 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
26 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
27 overtime, and premium pay as discussed above.

28 68. Accordingly, Defendants are liable for civil penalties pursuant to the California

1 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 203**

4 **(Against All Defendants)**

5 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 70. Numerous Employees are no longer employed by Defendants; they either quit
8 Defendants' employ or were fired therefrom.

9 71. Defendants failed to pay these Employees all wages due and certain at the time of
10 termination or within seventy-two (72) hours of resignation.

11 72. The wages withheld from these Employees by Defendants remained due and owing
12 for more than thirty (30) days from the date of separation of employment.

13 73. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
14 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
15 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
16 to thirty (30) days from the date they were due.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

19 **(Against All Defendants)**

20 74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 75. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
23 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
24 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
25 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
26 meaning of Code of Civil Procedure
27 § 1021.5.

28 76. Plaintiff is a "person" within the meaning of Business & Professions Code

1 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
2 relief, restitution, and other appropriate equitable relief.

3 77. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
4 business practices.

5 78. Wage-and-hour laws express fundamental public policies. Paying employees their
6 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
7 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
8 vigorously to enforce minimum labor standards, to ensure that employees are not required or
9 permitted to work under substandard and unlawful conditions, and to protect law-abiding
10 employers and their employees from competitors who lower costs to themselves by failing to
11 comply with minimum labor standards.

12 79. Defendants have violated statutes and public policies. Through the conduct alleged
13 in this Complaint Defendants have acted contrary to these public policies, have violated specific
14 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
15 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
16 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
17 guaranteed to all employees under the law.

18 80. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
19 violation of the Business & Professions Code § 17200 *et seq.*

20 81. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
21 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
22 reasonable care should have known that their conduct was unlawful; therefore their conduct
23 violates the Business & Professions Code § 17200 *et seq.*

24 82. As a proximate result of the above-mentioned acts of Defendants, Employees have
25 been damaged, in a sum to be proven at trial. Unless restrained by this Court Defendants will
26 continue to engage in such unlawful conduct as alleged above. Pursuant to the Business &
27 Professions Code this Court should make such orders or judgments, including the appointment of
28 a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of

1 any unlawful or deceptive practice prohibited by the Business & Professions Code, including but
2 not limited to the disgorgement of such profits as may be necessary to restore Employees to the
3 money Defendants have unlawfully failed to pay.

4 **NINTH CAUSE OF ACTION**

5 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

6 **(Against All Defendants)**

7 83. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full
8 herein.

9 84. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
10 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
11 alleged violators, Defendants.

12 85. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants' violation
13 of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions,
14 without limitation, based on the following California Labor Code sections: 201, 202, 203, 204, 226,
15 226.7, 510, 512, 558, 558.1 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199,
16 2698, 2699, *et seq*, and 2810.3.

17 86. The penalties shall be allocated as follows: 75% to the Labor and Workforce
18 Development Agency (LWDA) and 25% to the affected employee.

19 20 87. Employees also seek any and all penalties and remedies set forth in Labor Code § 558,
21 which states:

22 (a) Any employer or other person acting on behalf of an employer who violates, or causes
23 to be violated, a section of this chapter or any provision regulating hours and days of work in
24 any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
25 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
26 period for which the employee was underpaid in addition to an amount sufficient to recover
27 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid in addition to
an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person
had paid or caused to be paid a wage for overtime work in violation of any provision of this
chapter, or any provision regulating hours and days of work in any order of the Industrial

1 Welfare Commission, the Labor Commissioner may issue a citation. The procedures for
2 issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor
3 Commissioner for a violation of this chapter shall be the same as those set out in Section
4 1197.1.

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

7 88. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
8 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
9 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
10 violation in a subsequent citation, for which the employer fails to provide the employee a wage
11 deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that
12 Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

13 89. Plaintiff has exhausted their administrative remedy by sending a certified letter to the
14 LWDA and Defendants postmarked on October 31, 2024. The LWDA has not provided notice of its
15 intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiff prays for the following relief:

- 18 1. For an order certifying this action as a class action;
- 19 2. For compensatory damages in the amount of the unpaid minimum wages for work
20 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
21 the filing of this action, as may be proven;
- 22 3. For liquidated damages in the amount equal to the unpaid minimum wage and
23 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 24 4. For compensatory damages in the amount of all unpaid wages, including overtime
25 and double-time pay, as may be proven;
- 26 5. For compensatory damages in the amount of the hourly wage made by Employees
27 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
28 years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees
for each day requisite rest breaks were not provided or were deficiently provided where no

premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

10. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

11. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

12. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

13. For all general, special, and incidental damages as may be proven;

14. For an award of pre-judgment and post-judgment interest;

15. For an award providing for the payment of the costs of this suit;

16. For an award of attorneys' fees; and

17. For such other and further relief as this Court may deem proper and just.

DATED: January 6, 2025

D.LAW, INC.

By 

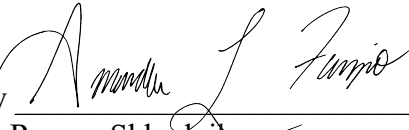
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
IVAN MICAH PROKOPOVICH
and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: January 6, 2025

D.LAW, INC.

By 
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
IVAN MICAH PROKOPOVICH
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 450 N Brand Blvd., Suite 840, Glendale, CA 91203.

George Martinez
4271 Edison Ave
Chino, CA 91710
Agent for CALIFORNIA DISTRIBUTION CENTER LLC

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

Executed on January 6, 2025, at Glendale, California.


Kathryn Perez