

Assigned for All Purposes

Judge Randall J. Sherman

CX-105

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JULIAN HERNANDEZ

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

JULIAN HERNANDEZ, an individual,  
on his own behalf and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

BEAR DOWN BRANDS, LLC, a  
Delaware limited liability company;  
BEYOND RESOURCE SOLUTIONS,  
INC., a California corporation; and  
DOES 1 through 100, inclusive,

Defendants.

**CASE NO.: 30-2024-01437019-CU-OE-CXC**

**CLASS ACTION COMPLAINT FOR:**

- 1. COMMON COUNT – MONEY HAD AND RECEIVED;**
- 2. UNLAWFUL COLLECTION OF EARNED WAGES IN VIOLATION OF CAL. LABOR CODE § 221;**
- 3. CONVERSION;**
- 4. UNJUST ENRICHMENT;**
- 5. FAILURE TO PAY WAGES DUE (*Labor Code* §§ 202, 204, 206, 218.5 and 218.6; IWC Wage Order No. 1);**
- 6. FAILURE TO PAY MINIMUM WAGES AND PAY FOR ALL WAGES EARNED (*Labor Code* §§ 204, 1194 and 1197; IWC Wage Order No. 1);**
- 7. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (*Cal. Labor Code* §1198.5); and**
- 8. UNFAIR COMPETITION (*Cal. Bus. & Prof. Code* §§17200 *et seq.*)**

**DEMAND FOR A JURY TRIAL**

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

5 Julian Hernandez ("Plaintiff") alleges the following:

6 1. This is a class action brought under California law by an individual who was  
7 employed by Bear Down Brands, LLC ("BDB") and Beyond Resource Solutions, Inc. ("BRS")  
8 (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on  
9 behalf of himself and others similarly situated to recover wages from Defendants due to  
10 Defendants' systematic withdrawal of wages from employees' accounts that rightfully  
11 belonged to the employees, violation of Cal. Labor Code §221, conversion, unjust enrichment,  
12 failure to pay wages due, failure to pay minimum wages, and failure to allow inspection of  
13 employee records.

14 2. Plaintiffs have worked as employees for Defendants at BDB's distribution  
15 center in Orange County, California.

16 3. Plaintiff, like his co-workers whom Defendants also employed during the  
17 applicable limitations period, spend their workdays as workers in the Return Department and  
18 other nonexempt employees, under illegal and highly regimented circumstances. That regimen  
19 results from Defendants' insistence to strictly monitor and curtail labor costs, which  
20 Defendants accomplish by not paying for all labor costs, withdrawing wages from employees'  
21 accounts that rightfully belong to the employees, violation of Cal. Labor Code §221,  
22 conversion, unjust enrichment, failing to pay wages due, failing to pay minimum wages and  
23 failing to allow inspection of employee records.

24 4. Plaintiff brings this class action to recover, among other things, wages earned  
25 and unlawfully converted, attorneys' fees, costs, and expenses.

26 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for  
27 himself and all members of the class, to compensate these workers for the converted wages and  
28 to protect current and future workers of Defendants from being subjected to similar wage theft.

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

7. Pursuant to the California Labor Code, Plaintiff intends to file a notice with Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to amend this Complaint once he completes and complies with the provisions under the law.

## JURISDICTION AND VENUE

8. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Julian Hernandez brings this Complaint on his own behalf and on behalf of all persons in the Class as defined in paragraph 19 below.

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

## THE PARTIES

**PLAINTIFF**

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Los Angeles, California;
- (b) Employed as an hourly employee for Defendants in Orange County, California;
- (c) Had his wages unlawfully withdrawn from his account;
- (d) Had his wages unlawfully converted from his account;
- (e) Had his wages unlawfully collected by Defendants in violation of Cal. Labor Code §221;

- 1 (f) Did not receive wages due in violation of *Labor Code* §§ 202, 204, 206,  
2 218.5, 218.6 and the applicable Wage Orders;  
3 (g) Did not receive minimum wages in violation of *Labor Code* §§ 1194,  
4 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders; and  
5 (h) Was not allowed to inspect his employment records as required by *Labor*  
6 *Code* §1198.5. Each of these was a violation of the *Labor Code*.

7 **DEFENDANTS**

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

- 10 (a) A Delaware limited liability company, with a principal place of business  
11 at 2803 S. Yale Street, Santa Ana, California 92704. Defendant BDB  
12 has been authorized to do business and has been doing business in the  
13 County of Orange;  
14 (b) The former employer of Plaintiff and the current and former employer of  
15 the putative Class members;  
16 (c) Paid Plaintiff and all putative Class Members on an hourly basis;  
17 (d) Withdrew wages from Plaintiff and all putative Class members' accounts  
18 that rightfully belonged to Plaintiff and Class members;  
19 (e) Violated Cal. Labor Code §221 by unlawfully collecting wages that  
20 belonged to Plaintiff and all putative Class members;  
21 (f) Wrongfully converted wages from Plaintiff and all putative Class  
22 members' accounts that rightfully belonged to Plaintiff and all putative  
23 Class members;  
24 (g) Was unjustly enriched at the expense of Plaintiff and all putative Class  
25 members;  
26 (h) Failed to pay wages due to Plaintiff and all putative Class members;  
27 (i) Failed to pay minimum wages to Plaintiff and all putative Class  
28 members; and

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(j) Failed to allow Plaintiff and all putative Class Members to inspect employment records. Each of these was a violation of the *Labor Code*.

12. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant BRS is, and at all times mentioned herein was:

(a) A California corporation, with a principal place of business at 1475 S. State College Blvd., Suite 116, Anaheim California 92806. Defendant has been authorized to do business and has been doing business in the County of Orange;

(b) The former employer of Plaintiff and the current and former employer of the putative Class members;

(c) Paid Plaintiff and all Class Members on an hourly basis;

(d) Withdrew wages from Plaintiff and Class members' accounts that rightfully belonged to Plaintiff and Class members;

(e) Violated Cal. Labor Code §221 by unlawfully collecting wages that belonged to Plaintiff and Class members;

(f) Wrongfully converted wages from Plaintiff and Class members' accounts that rightfully belonged to Plaintiff and Class members;

(g) Was unjustly enriched at the expense of Plaintiff and Class members;

(h) Failed to pay wages due to Plaintiff and Class members;

(i) Failed to pay minimum wages to Plaintiff and Class members; and

(j) Failed to allow Plaintiff and all putative Class Members to inspect employment records. Each of these was a violation of the *Labor Code*.

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

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

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

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

20           17. Plaintiff is informed and believes, and based on that information and belief  
21 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,  
22 inclusive, knowingly and willfully acted in concert, conspired and agreed together among  
23 themselves and entered into a combination and systemized campaign of activity to *inter alia*  
24 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in  
25 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the  
26 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their  
27 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and  
28 belief, and to all appearances, Defendants, and each of them, represented a unified body so that

1 the actions of one Defendant were accomplished in concert with, and with the knowledge,  
2 ratification, authorization and approval of each of the other Defendants.

3 **JOINT EMPLOYER ALLEGATIONS**

4 18. Plaintiff is informed and believes and thereon alleges that given the amount of  
5 influence, control and direction Defendants BDB and BRS exerted over Plaintiff's  
6 employment, Defendants BDB and BRS were Plaintiff's co-employers.

7 19. Plaintiff is informed and believes and thereon alleges that Defendant BDB  
8 directly employed, or on Defendant BRS's behalf exercised control over Plaintiff's wages,  
9 hours and/or working conditions (start time, end time, etc.) such that BDB was a joint employer  
10 with BRS.

11 **CLASS ALLEGATIONS**

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

13 20. The Class ("the Class") is defined as follows:

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

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

22  
23 21. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to  
24 amend or modify the Class description with greater specificity or further division into  
25 subclasses or limitation to particular issues.

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

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

5 **C. The Class Requisites**

6           23. At all material times, Plaintiff was a member of the Class.

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

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

27           25. The persons who comprise the Class are so numerous that joining all of them is  
28 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.



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

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

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

1 to protect their interests, by, for example, potentially exhausting  
2 the funds available from Defendant, and

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

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

### 11 GENERAL ALLEGATIONS

12 28. At all times material hereto, Defendant BDB was and is a manufacturing  
13 company that focuses on premium home, health, and personal care products.

14 29. At all times material hereto Defendant BRS was and is a staffing agency.

15 30. Plaintiff and members of the Class were employed as workers in the Distribution  
16 Center and other nonexempt employees at Defendant BDB's distribution center in Orange  
17 County in California at various times during the Class Period.

18 31. Plaintiff seeks relief from Defendants' uniform policies and practices of denying  
19 Plaintiff and members of the Class wages and compensation owed under California law.

20 32. Starting on or about March 18, 2024 and continuing through the present,  
21 Defendants employed Plaintiff on an hourly basis as a worker in the distribution center of BDB  
22 in Orange County in California.

23 33. While employed by Defendants as a worker in the distribution center, Plaintiff  
24 was paid \$16.00 per hour.

25 34. The employment by Defendants of the Class Members, and each them, is  
26 governed by Industrial Welfare Commission Wage Order 1, which covers those persons  
27 employed in the manufacturing industry.



1 good conscience be returned to them. As a result, Plaintiff and the Class are entitled to: (a)  
2 restitutional disgorgement of all monies that rightfully belong to Plaintiff and the Class, plus  
3 interest; (b) injunctive relief prohibiting Defendants from continuing in the future the practice  
4 of unauthorized withdrawal of funds from Plaintiff and Class members' account; and (c)  
5 attorneys' fee pursuant to Cal. Code Civ. Proc. §1021.5.  
6

7 **SECOND CAUSE OF ACTION**

8 **UNLAWFUL COLLECTION OF EARNED WAGES**

9 **(Labor Code §§ 219, 221 By Plaintiffs Against all Defendants and Does 1 through 100)**

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

12 45. At all relevant times, Plaintiff and members of the Class were employees of  
13 Defendants covered by Labor Code § 221.

14 46. California Labor Code § 221 states that “[i]t shall be unlawful for any employer  
15 to collect or receive from an employee any part of wages theretofore paid by said employer to  
16 said employee.”

17 47. Labor Code § 221 reflects “‘California's strong public policy favoring the  
18 protection of employees' wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal. App.  
19 4th 1152, 1166.

20 48. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221  
21 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor  
22 Code § 221 are nonnegotiable and cannot be waived by the parties. *See Sciborski*, 205 Cal.  
23 App. 4th at 1166.

24 49. Pursuant to Labor Code §221, Plaintiff and Class members were entitled to not  
25 have their earned wages collected by Defendants.

26 50. As previously alleged herein, Defendants maintained and continues to maintain  
27 a policy or practice of the unlawful collection and receipt of earned wages when it withdraws  
28

1 wages from Plaintiff and Class members' accounts that they do not collect by 4 a.m. These  
2 collected wages were not authorized by Plaintiff and Class Members.

3 51. In extracting monies from Plaintiff and Class members' accounts, Defendants  
4 violated Labor Code §221.

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

11 53. As a result of Defendants' violations of Labor Code § 221, Plaintiff and the  
12 members of the Class seek to recover the total amount of wages unlawfully collected, as well  
13 as penalties, interest, attorneys' fees, and costs as permitted under California law pursuant to  
14 Labor Code §§ 218, 218.5 and 218.6.

15  
16 **THIRD CAUSE OF ACTION**

17 **FOR CONVERSION**

18 **(By Plaintiffs Against all Defendants and Does 1 through 100)**

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

21 55. Beginning in or about March 2024 and continuing through the present,  
22 Defendants withdrew Plaintiff and Class members' earned wages from their accounts and  
23 converted them to their own use. Defendants have refused to cease withdrawing funds from  
24 Plaintiff and Class members' accounts that are not withdrawn by 4 a.m. on the date of deposit,  
25 notwithstanding the fact that Plaintiff has so demanded.

26 56. Defendants, through its practice of making unauthorized withdrawals from  
27 Plaintiff and Class members' accounts and profiting thereby at the expense of Plaintiff and  
28 Class members, has converted to its own use monies of Plaintiff and Class members. Each

1 withdrawal by Defendants from Plaintiff and Class members' accounts constitutes a taking of  
2 such monies for Defendants' own use without authorization and is thus a conversion by a  
3 wrongful act causing damage to Plaintiff and the Class.

4 57. Plaintiff and Class members did not consent to Defendants' withdrawal of their  
5 earned wages from their accounts.

6 58. Monies converted by Defendants are a specific sum as to each Class member  
7 and the specific sum for each Class member is capable of identification and quantification by  
8 proof.

9 59. As a proximate result of Defendants' conversion, Plaintiff suffered damages  
10 within the jurisdiction of this Court, according to proof.

11 60. Plaintiff and the Class are at risk of incurring such damage in the future unless  
12 Defendants' conduct as alleged herein is enjoined.

13 61. Defendants' acts alleged above were willful, wanton, malicious, and oppressive,  
14 were undertaken with intent and justify the awarding of exemplary and punitive damages.

#### 15 16 **FOURTH CAUSE OF ACTION**

#### 17 **UNJUST ENRICHMENT**

18 **(By Plaintiffs Against all Defendants and Does 1 through 100)**

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

21 63. Defendants, and each of them, through their wrongful conduct as alleged herein,  
22 have reaped substantial revenue and/or profits from their unauthorized withdrawals of Plaintiff  
23 and Class members' earned wages. In so doing, Defendants have caused Plaintiff and Class  
24 members to suffer substantial monetary damages, all of which damages were not only  
25 foreseeable but the intended consequences of Defendants' collective actions.

26 64. Defendants have knowledge of the benefit they received by means of their  
27 unauthorized withdrawals from Plaintiff and Class members' accounts.

28 65. Defendants have voluntarily accepted and retained the earned wages.

66. The circumstances, as described herein, including the fact that the withdrawals were not authorized and are otherwise unlawful, are such that Defendants will be unjustly enriched if permitted to retain Plaintiff and Class members' earned wages that they have collected from them, and it would be inequitable for Defendants to retain the ill-gotten wages without paying the value thereof to Plaintiff and Class members.

67. As a direct and proximate result of Defendants' unlawful acts and conduct, Plaintiff and Class members have been deprived of the use of their money that was unlawfully withdrawn and collected by Defendants, and are therefore entitled to restoration of their monies, plus interest.

## **FIFTH CAUSE OF ACTION**

**(Failure to Pay Wages Due in Violation of Labor Code §§ 202, 204, 206, 218.5, 218.6, IWC  
Wage Order 1 – By Plaintiff Against all Defendants and Does 1 through 100)**

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

69. During Plaintiff and Class members' entire employment with Defendants, pursuant to Labor Code §§ 202, 204, 206, 218.5, 218.6, Plaintiff and Class members performed work as required by Defendants. Plaintiff and Class members received wage payments. However, Defendants withdrew those payments without Plaintiff and Class members' consent.

70. Plaintiff has demanded full payment of his wages that are owed, and Defendants have refused to pay amounts due to Plaintiff and Class members.

71. Throughout Plaintiff and Class members' employment, Defendants failed and refused to pay compensation owed to Plaintiff and Class members as alleged herein and as required by law.

72. The foregoing unpaid compensation is owed and unpaid. As a direct and proximate result of Defendants' failure and refusal to pay compensation owed, Plaintiff and Class members suffered damages in an amount within the jurisdiction of this Court, according

1 to proof at trial, plus any applicable interest at the rate specified in Civil Code §3289,  
2 attorneys' fees and cost.

3  
4 **SIXTH CAUSE OF ACTION**

5 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**  
6 **119, IWC Wage Order 1 – By Plaintiff Against all Defendants and Does 1 through 100)**

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

9 74. *Labor Code* § 1197 states the California requirement that employees must be  
10 paid at least the minimum wage fixed by the Commission, and any payment of less than the  
11 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving  
12 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of  
13 the full amount of this minimum wage.” IWC Wage Order 1-2001 also obligates employers to  
14 pay each employee minimum wages for all hours worked. These minimum wage standards  
15 apply to each hour employees worked for which they were not paid. Therefore, an employer's  
16 failure to pay for any particular hour of time worked by an employee is unlawful, even if  
17 averaging an employee's total pay over all hours worked, paid or not, results in an average  
18 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324  
19 (2005).

20 75. Here, Plaintiff and the Class were not paid minimum wages that were due to  
21 them due to Defendants' unauthorized withdrawals.

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

25 77. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an  
26 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*  
27 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under  
28 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with



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

6 78. Plaintiff and Class members suffered and continue to suffer losses related to the  
7 use and enjoyment of compensation due and owing to them as a direct result of Defendants'  
8 unlawful acts and Labor Code violations in an amount within the jurisdiction of this Court, to  
9 be shown according to proof at trial.

10 79. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum  
11 wages against employers and those individuals acting in their behalf. Plaintiff and Class  
12 members request that this Court assess said penalty against Defendants in an amount to be  
13 proven at trial.

14 80. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and  
15 1194.2, Plaintiff and the Class are entitled to recover the unpaid balances of the minimum  
16 wages Defendants owe them, plus interest, penalties, attorneys' fees, expenses and costs of suit,  
17 in an amount within the jurisdiction of this Court, according to proof.

18 81. Under *Labor Code* § 1194.2, Plaintiff and the Class are entitled to recover as  
19 liquidated damages, amounts equal to the wages unlawfully unpaid and interest thereon.

## 20 21 **SEVENTH CAUSE OF ACTION**

### 22 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

23 **(Labor Code §1198.5 By Plaintiffs against all Defendants and Does 1 through 100)**

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

26 83. California Labor Code Section 1198.5 provides:

27 (a) Every current and former employee, or his or her representative, has the  
28 right to inspect and receive a copy of the personnel records that the

1 employer maintains relating to the employee's performance or to any  
2 grievance concerning the employee.

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

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

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

22 84. Additionally, pursuant to Wage Order 1, at section 7 re: Records, employers are  
23 required to keep accurate payroll records on each employee, and such records must be made  
24 readily available for inspection by the employee upon reasonable request. The employer must  
25 also maintain accurate production records.

26 85. On or about October 29, 2024, Plaintiff' counsel issued a written request to  
27 Defendants for copies of his personnel records.

28 86. Under California Labor Code Sections 226, 432 and 1198.5, such records were  
to include all records relating to Plaintiff's hours worked, wage statements and compensation.  
Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for  
Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of  
his records.

87. As a direct result and consequence of Defendants' failure and refusal to permit  
Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or

1 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a  
2 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory  
3 penalty of \$750 based upon Defendants' violation of §1198.  
4

5 **EIGHTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

7 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against all Defendants and**  
8 **Does 1 through 100)**

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

11 89. Pursuant to IWC Wage Order No. 1, Defendants were the employers of Plaintiff  
12 and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions  
13 Code §17021.

14 90. The Business & Professions Code defines unfair competition as any unlawful,  
15 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct  
16 described herein, Defendants have engaged in unfair and unlawful practices by (1) withdrawal  
17 of wages from employees' accounts that rightfully belonged to the employees; (2) collection of  
18 earned wages from their employees' accounts; (3) conversion of monies belonging to Plaintiff  
19 and Class members, (4) unjustly profiting from their retention of Plaintiff and Class members  
20 earned wages, (5) failing to pay wages due. (5) failing to pay minimum wages, and (6) failing  
21 to allow inspection of employment records, all in violation of Business & Professions Code §§  
22 17200 *et seq.*

23 91. By and through the unfair and unlawful business practices described herein,  
24 Defendants have obtained valuable property, money and services from the Plaintiff and the  
25 Class and have deprived them of valuable rights and benefits guaranteed by law all to the  
26 detriment of Plaintiff and the Class.

27 92. All the acts described herein are violations of, among other things, the Labor  
28 Code and Industrial Commission Wage Order No. 1, are unlawful and in violation of public

1 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby  
2 constitute unfair and unlawful business practices in violation of Business & Professions Code  
3 §§ 17200 et seq.

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

8 94. Plaintiff and the Class are further entitled to, and do, seek a declaration that the  
9 above-described business practices are unfair and unlawful and that injunctive relief should be  
10 issued restraining Defendants from engaging in any of the above described unfair and unlawful  
11 business practices in the future.

12 95. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to  
13 redress the injuries which they have suffered as a consequence of the unfair and unlawful  
14 business practices of Defendants. As a result of the unfair and unlawful business practices  
15 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable  
16 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful  
17 business practices. In addition, Defendants should be required to disgorge the unpaid moneys  
18 to Plaintiff and the Class.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff and the Class respectfully pray that this Court enter judgment  
21 in their favor and against Defendants, and each of them, as follows:

22 1. For compensatory damages in the amount of unauthorized withdrawals of  
23 earned wages taken from Plaintiff and Class Members, according to proof;

24 2. For all sums converted from Plaintiff and Class members;

25 3. For compensatory damages in the amount of unpaid minimum wages due to  
26 Plaintiff and Class members;

27 4. For compensatory damages in the amount of wages due to Plaintiff and Class  
28 members;

- 1           5.       For a constructive trust for the benefit of Plaintiff and Class members;
- 2           6.       For payment of all monies Defendants have collected, taken and received from
- 3 Plaintiff and Class members;
- 4           7.       For restitution to Plaintiff and Class members of the monies Defendants have
- 5 wrongfully taken;
- 6           8.       For a temporary restraining order, preliminary injunction and permanent
- 7 injunction restraining Defendants and their agents from continuing to wrongfully withdraw
- 8 earned wages from Plaintiff and Class members' accounts;
- 9           9.       For an award of consequential damages in Plaintiff and Class Members' favor
- 10 and against Defendants, in an amount to be proven at trial;
- 11           10.      For prejudgment interest accrued on all wages from the date that wages were
- 12 unlawfully withdrawn, pursuant to *Cal. Lab. Code* §§218.6, according to proof;
- 13           11.      For reasonable costs, including attorneys' fees, in an amount according to proof
- 14 pursuant to, *inter alia*, *Cal. Labor Code* §§ 218.5 and/or *Cal. Code of Civ. Proc.* §1021.5;
- 15           12.      For an award of restitution of wages to Plaintiff and Class Members in an
- 16 amount equal to the amount of wages owed and unlawfully withdrawn, according to proof;
- 17           13.      For injunctive relief requiring Defendants to comply with Labor Code
- 18 1198.5(b)(1);
- 19           14.      For injunctive relief ordering the continuing unfair business acts and practices to
- 20 cease, as the Court deems just and proper;
- 21           15.      For other injunctive relief ordering Defendants to notify Plaintiff and Class
- 22 members that their earned wages have been unlawfully withdrawn from their accounts in
- 23 violation of California law;
- 24           16.      For punitive and exemplary damages in a sum to be determined at trial; and
- 25           17.      For such other and further relief as the Court deems just and proper.

26                           **DEMAND FOR JURY TRIAL**

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

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LIPELES LAW GROUP, APC

Date: October 29, 2024

By:   
Thomas H. Schelly  
Attorneys for Plaintiff  
Julian Hernandez