

MARALLE MESSRELIAN (SBN 316974)

maralle@mmlawapc.com

MM LAW, APC

500 N. Brand Blvd., Suite 2000

Glendale, CA 91203

Telephone (818) 810-7747

Facsimile (818) 230-9018

Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

SUMMONS ISSUED

Attorneys for Plaintiff,

ENRIQUE ORTIZ RAFAEL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

(UNLIMITED JURISDICTION)

ENRIQUE ORTIZ RAFAEL,

Plaintiff,

vs.

CALIFORNIA LUMBER COMPANY, INC.;
A & J FENCING; JUSTIN LENA; and DOES
1 to 25, inclusive,

Defendants.

Case No.: C25-02775

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and
- 9) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ENRIQUE ORTIZ RAFAEL (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 4/16-2001 (hereafter “the Wage Order”), and the Business and Professions Code against CALIFORNIA LUMBER COMPANY, INC., A & J FENCING; JUSTIN LENA, and DOES 1 to 25, inclusive, (collectively “CALIFORNIA LUMBER COMPANY” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Contra Costa because Defendants CALIFORNIA LUMBER COMPANY, INC., A & J FENCING, JUSTIN LENA, and DOES 1 to 25, inclusive, do business in the County of Contra Costa and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Contra Costa is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

THE PARTIES

3. Plaintiff ENRIQUE ORTIZ RAFAEL is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11040/11160 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant CALIFORNIA LUMBER COMPANY, INC. is and was a California corporation, doing business in Contra Costa County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

5. Defendant A & J FENCING is and was a business in Contra Costa County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

6. Defendant JUSTIN LENA is a citizen of California based on Plaintiff’s information and belief.

1 7. In relevant part, Labor Code section 558.1 states:

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

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

11 8. Based on Plaintiff’s information and belief, Defendant JUSTIN LENA is a
12 natural person, and an owner, director, officer, and/or managing agent of CALIFORNIA
13 LUMBER COMPANY, INC. and A & J FENCING, who directly or indirectly, or through his
14 agent, employed or exercised control over the wages, hours, or working conditions of Plaintiff
15 and the Aggrieved Employees (defined below). Therefore, he is liable to Plaintiff and the
16 Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code
17 sections 203, 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

18 9. The “Aggrieved Employees” are all current and former non-exempt or hourly
19 paid employees who worked for Defendants in California during the relevant time period
20 pursuant to California Labor Code section 2698, *et. seq.*, the Labor Code Private Attorneys
21 General Act of 2004 (“PAGA”).

22 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
23 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
24 is informed and believes and thereon alleges that said defendants are legally responsible for the
25 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
26 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
27 defendants when ascertained.

28 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times
 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
 remaining Defendants, and in doing the things hereinafter alleged, were acting within the course
 and scope of such agency or employment, and with the approval and ratification of each of the

1 other Defendants.

2 12. Plaintiff is informed and believes and thereon alleges that each and every one of
3 the acts and omissions alleged herein were performed by, and/or are attributable to, all
4 Defendants, each acting as agents and/or employees, and/or under the direction and control of
5 each of the other Defendants, and that said acts and failures to act were within the course and
6 scope of said agency, employment, and/or direction and control.

7 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
8 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
9 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
10 Employees in accordance with applicable California labor laws as alleged herein.

11 **GENERAL ALLEGATIONS**

12 14. CALIFORNIA LUMBER COMPANY first began to employ Plaintiff as a
13 laborer on or around January 2008. Plaintiff generally worked Monday through Friday from
14 approximately 7:00 a.m. to 2:00/3:00 p.m. Plaintiff's employment ended on or around
15 September 27, 2024.

16 15. At all relevant times, CALIFORNIA LUMBER COMPANY issued wages to
17 Plaintiff and all of the other Aggrieved Employees on a biweekly basis and paid them by the
18 hour. Plaintiff's latest rate of pay was \$30.00 per hour. At all relevant times, Plaintiff and all of
19 the other Aggrieved Employees as non-exempt employees entitled to the protections of the
20 Labor Code and the Wage Order.

21 16. CALIFORNIA LUMBER COMPANY failed to pay Plaintiff and the other
22 Aggrieved Employees for all time worked or subject to its control. This is so because the
23 company had a policy of rounding down the number of hours worked, resulting in "time
24 shaving" and further resulting in Plaintiff and the Aggrieved Employees not being paid for all
25 hours worked, including the minimum wage. There was no formal clock-in/clock-out and
26 timekeeping system at the workplace, and, as such, Plaintiff and all of the other Aggrieved
27 Employees were not paid for all hours worked. In addition, to the extent Plaintiff and the other
28 Aggrieved Employees worked through their meal periods and those meal periods were

1 interrupted, they were not compensated for that time, which would be akin to a minimum wage
2 violation. Furthermore, CALIFORNIA LUMBER COMPANY ownership/management would
3 often text Plaintiff and the other Aggrieved Employees about work-related matters before the
4 start of their shifts or after their shifts had ended. Plaintiff would consistently receive texts from
5 ownership/management regarding his job locations and tasks.

6 17. CALIFORNIA LUMBER COMPANY failed to pay Plaintiff and the Aggrieved
7 Employees properly-calculated overtime wages even though they worked more than 8 hours
8 per day and/or 40 hours per week throughout their employment. Plaintiff's and the Aggrieved
9 Employees' actual work hours (including the "off the clock" hours mentioned above) entitled
10 them to overtime compensation. However, CALIFORNIA LUMBER COMPANY did not
11 compensate Plaintiff and the Aggrieved Employees with the correct amount of overtime. It was
12 not company policy to keep accurate track of all hours worked and to pay employees the
13 accurate amount of overtime, especially since the "off the clock" work was not factored into the
14 equation. Furthermore, any incentive payments and/or bonus payments were not factored into
15 employees' regular rate of pay for purposes of deciphering the correct overtime rate of pay. In
16 addition, any bonus and/or incentive payments were not factored into the correct sick pay
17 wages and meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021)
18 11 Cal. 5th 858, 863.

19 18. CALIFORNIA LUMBER COMPANY failed to provide all compliant meal
20 periods and authorize and permit all compliant rest periods to which Plaintiff and the other
21 Aggrieved Employees were entitled. Plaintiff and the other Aggrieved Employees were entitled
22 to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work
23 and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof
24 worked. Due to the workload and pressure from management to finish jobs fast, Plaintiff would
25 not be able to take timely, uninterrupted meal periods before the 5th hour worked. Similarly,
26 Plaintiff and the other Aggrieved Employees were not able to take their 10-minute rest breaks
27 due to the workload. In fact, throughout his employment tenure, Plaintiff never took rest
28 breaks. As such, the culture as well as the policies and procedures of CALIFORNIA LUMBER

1 COMPANY did not lend itself to the employees receiving consistent statutory rest breaks
2 wherein they were relieved of all work duties. The environment at CALIFORNIA LUMBER
3 COMPANY was not conducive to receiving multiple statutory rest breaks under California law
4 and timely, statutory rest breaks were not authorized or enforced. Moreover, when Plaintiff and
5 the other Aggrieved Employees tried to take their meal periods, CALIFORNIA LUMBER
6 COMPANY supervisors/staff would interrupt them with questions about work related matters
7 or their meal periods were cut short due to their workload. On information and belief,
8 CALIFORNIA LUMBER COMPANY did not provide premium wages for these meal and rest
9 break violations; if CALIFORNIA LUMBER COMPANY did provide premium wages, they
10 were not paid at the correct rate, as explained above.

11 19. CALIFORNIA LUMBER COMPANY failed to reimburse Plaintiff and the
12 other Aggrieved Employees for business expenses they incurred in direct consequence of the
13 discharge of their duties. CALIFORNIA LUMBER COMPANY required Plaintiff and the
14 Aggrieved Employees to use their personal vehicles to travel to the job sites and use their own
15 mobile phones to communicate with ownership/management concerning work matters.
16 However, CALIFORNIA LUMBER COMPANY did not reimburse Plaintiff and the other
17 Aggrieved Employees for gas/mileage or their mobile phone expenses. Accordingly,
18 CALIFORNIA LUMBER COMPANY was in violation of California Labor Code sections
19 2800 and 2802.

20 20. CALIFORNIA LUMBER COMPANY failed to pay its employees all wages due
21 to them within any time period specified by California Labor Code section 204, including the
22 minimum wages and overtime as described above as well as meal/rest break premiums.

23 21. CALIFORNIA LUMBER COMPANY did not provide Plaintiff and the other
24 Aggrieved Employees accurate, itemized wage statements in violation of Labor Code 226.
25 Wage statements must include all hours worked, overtime hours worked, all applicable hourly
26 rates, the correct legal name and correct address of employer entity, gross wages earned, all
27 deductions, net wages earned, reimbursement for business expenses, the correct start and end of
28 the applicable pay period, the employee ID numbers or social security numbers, among other

1 items. Labor Code § 226(a)(2). CALIFORNIA LUMBER COMPANY's failure to maintain
2 accurate records as to the hours worked daily by employees also constitutes a violation of
3 Labor Code section 1174(d).

4 22. Finally, because CALIFORNIA LUMBER COMPANY did not properly pay all
5 wages earned as explained herein, CALIFORNIA LUMBER COMPANY also failed to pay
6 final wages owed to the Aggrieved Employees in violation of Labor Code section 203. These
7 earned but unpaid wages include minimum wages and compensation for all hours worked,
8 overtime compensation, premium pay for missed meal and rest breaks, and business expense
9 reimbursement, among others.

10 23. Defendants have also violated Labor Code section 558 and engaged in business
11 practices which violate Business and Professions Code Section 17200.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

14 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

15 **(By Plaintiff against all Defendants)**

16 24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

17 25. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
18 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
19 and the Wage Order.

20 26. Section 2(L)/2(J) of Wage Order 4-2001/16-2001 define "hours worked" as "the
21 time during which an employee is subject to the control of an employer, and includes all the time
22 the employee is suffered or permitted to work, whether or not required to do so."

23 27. Section 3 of the Wage Order states:

24 **(A) Daily Overtime - General Provisions**

25 (1) The following overtime provisions are applicable to
26 employees 18 years of age or over and to employees 16 or
27 17 years of age who are not required by law to attend
28 school and are not otherwise prohibited by law from
engaging in the subject work. Such employees shall not be
employed more than eight (8) hours in any workday or
more than 40 hours in any workweek unless the employee

1 receives one and one-half (1 ½) times such employee's
2 regular rate of pay for all hours worked over 40 hours in
3 the workweek. Eight (8) hours of labor constitutes a day's
4 work. Employment beyond eight (8) hours in any workday
5 or more than six (6) days in any workweek is permissible
6 provided the employee is compensated for such overtime
7 at not less than:

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

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

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

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

27 29. Labor Code section 510 states:

28 Eight hours of labor constitutes a day's work. Any work in excess
of eight hours in one workday and any work in excess of 40 hours
in any one workweek and the first eight hours worked on the
seventh day of work in any one workweek shall be compensated at
the rate of no less than one and one-half times the regular rate of
pay for an employee. Any work in excess of 12 hours in one day
shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of
eight hours on any seventh day of a workweek shall be
compensated at the rate of no less than twice the regular rate of
pay of an employee. Nothing in this section requires an employer
to combine more than one rate of overtime compensation in order
to calculate the amount to be paid to an employee for any hour of

overtime work.

30. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

31. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

32. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

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

34. Defendants required Plaintiff to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating him for such time worked at the premium rates required by California law.

35. As described more fully above, Defendants failed to pay all minimum, regular, overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime and double time wages based on correct regular rates of pay.

36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent that he was not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum, overtime, and double-time wages.

37. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon, and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

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

9 43. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
10 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

11 44. Defendants failed to authorize and permit Plaintiff to take compliant rest periods
12 and failed to pay one hour of correctly-calculated premium pay for each day such a rest period
13 was not provided.

14 45. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
15 an amount subject to proof to the extent he was not paid additional wages owed for all rest
16 breaks not provided to him.

17 46. By reason of the above, Plaintiff is entitled to premium wages for workdays in
18 which one or more rest breaks were not provided to him pursuant to California Labor Code §
19 226.7, plus interest and costs.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 **(Lab. Code §§ 226.7, 512, and 1198)**

23 **(By Plaintiff against all Defendants)**

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

25 48. At all relevant times during the applicable limitations period, Plaintiff was a
26 non-exempt employee of Defendants and entitled to the benefits and protections of California
27 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

28 49. Labor Code § 1198 states,

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

1 50. In relevant part, Labor Code Section 512 states

2 “An employer may not employ an employee for a work period of more
3 than five hours per day without providing the employee with a meal
4 period of not less than 30 minutes, except that if the total work period
5 per day of the employee is no more than six hours, the meal period may
6 be waived by mutual consent of both the employer and employee. An
7 employer may not employ an employee for a work period of more than
8 10 hours per day without providing the employee with a second meal
9 period of not less than 30 minutes, except that if the total hours worked
10 is no more than 12 hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal
12 period was not waived.”

13 51. In relevant part, Section 11 of the Wage Order states:

14 Meal Periods:

15 (A) No employer shall employ any person for a work period of more
16 than five (5) hours without a meal period of not less than 30
17 minutes, except that when a work period of not more than six (6)
18 hours will complete the day’s work the meal period may be
19 waived by mutual consent of the employer and the employee...

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

25 52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was
26 entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he
27 worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled
28 to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

29 53. During the relevant time period, Defendants failed to provide Plaintiff with
30 compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-
31 calculated premium pay for each day such a meal period was not provided.

32 54. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in
33 an amount subject to proof to the extent he was not paid additional wages owed for all meal
34 periods not provided to him.

35 55. By reason of the above, Plaintiff is entitled to premium wages for workdays in

1 which one or more meal periods were not provided to him pursuant to California Labor Code §
2 226.7, plus interest and costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO INDEMNIFY**

5 **(Lab. Code §§ 1198 & 2802)**

6 **(By Plaintiff against all Defendants)**

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

8 57. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
9 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
10 Wage Order.

11 58. In pertinent part, California Labor Code § 2802(a) states:

12 An employer shall indemnify his or her employee[s] for all
13 necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties.

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

16 60. Defendants failed to reimburse Plaintiff for business expenses he incurred in
17 Direct consequence of the discharge of his duties. CALIFORNIA LUMBER COMPANY
18 required Plaintiff to use his personal vehicles to travel to the job sites and use his own mobile
19 phones to communicate with ownership/management concerning work matters. However,
20 Defendants did not reimburse Plaintiff for gas/mileage or his mobile phone expenses.
21 Accordingly, Defendants were in violation of California Labor Code sections 2800 and 2802.

22 61. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
23 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
24 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
25 of performing his duties.

26 62. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
27 expenditures and losses and interest due and owing to within three years (3) of the date of the
28 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §

1 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 **(California Labor Code Section 226)**

5 **(By Plaintiff against all Defendants)**

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

7 64. Pursuant to California Labor Code Section 226, every employer must furnish
8 each employee an itemized statement of wages and deductions at the time of payment of wages.

9 65. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
10 that accurately reflected all information required by Labor Code Section 226, including but not
11 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
12 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
13 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to
14 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
15 California Labor Code Section 226(a).

16 66. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
17 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
18 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
19 pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
20 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
21 the 1-year period immediately preceding the date this lawsuit was filed.

22 67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
23 sustained damages, including loss of earnings, in an amount to be established at trial. As a
24 further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff
25 is entitled to recover penalties, in an amount to be established at trial, as well as costs and
26 attorney's fees pursuant to statute.

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

1 at trial.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

4 **(California Labor Code Sections 201-203)**

5 **(By Plaintiff against all Defendants)**

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

7 70. Pursuant to California Labor Code Section 201(a), an employer who discharges
8 an employee must immediately pay for all compensation due and owing.

9 71. Pursuant to California Labor Code Section 202, when an employee resigns, the
10 employer must pay all compensation due and owing within 72 hours of resignation, or on the
11 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

12 72. Pursuant to California Labor Code Section 203, if an employer willfully fails to
13 pay, without abatement or reduction, any wages of an employee whose employment ends, the
14 wages of the employee shall continue as a penalty from the due date at the same rate until paid
15 or until an action is commenced; however, the wages shall not continue for more than 30 days
16 for failure to pay an employee owed wages.

17 73. After Plaintiff's employment with Defendants ended, Defendants willfully
18 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

19 74. Under this cause of action, Plaintiff prays for penalties due under the statutes
20 alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof
21 at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
22 preceding the filing of this lawsuit.

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

3 **(California Labor Code Section 204)**

4 **(By Plaintiff against all Defendants)**

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

6 78. California Labor Code Section 204 establishes the fundamental right of all
7 employees in the State of California to be paid wages in a timely fashion for their work.

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

11 80. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
12 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
13 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
14 worked, including the minimum wage, overtime hours, double time hours, and premium pay for
15 missed meal and rest breaks.

16 81. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
17 an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
18 amount of unpaid wages is not presently known to Plaintiff but can be determined directly from
19 Defendants' records or indirectly based on information from Defendants' records.

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

23 **EIGHTH CAUSE OF ACTION**

24 **CIVIL PENALTIES**

25 **(Lab. Code §§ 2698, *et seq.*)**

26 **(By Plaintiff against all Defendants)**

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

28 84. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of

1 2004 (“PAGA”) because he was employed by Defendants during the applicable statutory period
2 and suffered one or more of the violations of the Labor Code set forth in this Complaint.
3 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
4 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
5 PAGA, plus reasonable attorney’s fees and costs.

6 85. During the applicable time period, Defendants violated California Labor Code
7 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

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

11 87. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
12 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’
13 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,
14 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following
15 amounts:

16 A. For violations of California Labor Code § 204, one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
18 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
19 established by California Labor Code § 210).

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

24 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
25 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
27 established by California Labor Code § 558).

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

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

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

8 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
9 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
10 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
11 period for each subsequent violation (penalty amounts established by California Labor Code §
12 2699(f)(2)).

13 88. Plaintiff has complied with the procedures for bringing suit specified in
14 California Labor Code § 2699.3. By letter dated October 28, 2024, Plaintiff filed written notice
15 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
16 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
17 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
18 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
19 take action in response within 65 calendar days of the date of Plaintiff’s notice.

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

23 **NINTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

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

26 **(By Plaintiff against all Defendants except JUSTIN LENA)**

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

28 91. At all relevant times during the applicable limitations period, Plaintiff has been

1 an employee of Defendants and entitled to the benefits and protections of the Business and
2 Professions Code §§ 17200, *et seq.*

3 92. Defendants engaged in unfair competition by failing to 1) pay their employees
4 for all hours worked at the correct rates of pay, 2) pay their employees premium wages for
5 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
6 employees for necessary business expenses incurred in the course of performing their duties.

7 93. The unlawful conduct of Defendants alleged herein amounts to and constitutes
8 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
9 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
10 unfairly gained a competitive advantage over other comparable companies doing business in
11 California that comply with their legal obligations to, among other things, pay their employees
12 premium wages for workdays in which they did not provide employees with one or more meal
13 and rest periods, indemnify them for all business expenses incurred during the course of
14 performing their duties, including, but not limited to, personal tools and mobile phone
15 expenses, and pay them all wages earned for all hours worked.

16 94. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
17 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
18 hours worked, failed to provide him with premium wages for missed meal and rest periods, and
19 failed to reimburse Plaintiff for all expenses he incurred in the course of performing his duties.

20 95. Pursuant to California Business & Professions Code § 17203, Plaintiff is
21 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
22 or otherwise retained by means of their unlawful and unfair business practices.

23 96. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
24 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
25 benefit doctrine and/or the common fund doctrine.

26 97. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
27 stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon,
28 as permitted by law, all in amounts subject to proof.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 3 1. For general damages according to proof;
- 4 2. For special and consequential damages to the extent allowed by law;
- 5 3. For punitive and exemplary damages against corporate Defendants in an amount subject
- 6 to proof;
- 7 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
- 8 subject to proof at trial;
- 9 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 10 6. proof at trial;
- 11 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 12 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 13 8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 14 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 15 9. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 16 against Defendants as described more particularly in the Complaint;
- 17 10. For restitution and disgorgement for all unfair business practices by corporate
- 18 Defendants against Plaintiff in an amount according to proof;
- 19 11. For an order enjoining corporate Defendants. from further unfair and unlawful business
- 20 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 21 12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 22 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 23 damages, damages, penalties, and waiting time penalties according to proof to the extent
- 24 permitted by law;
- 25 13. For the imposition of civil penalties and/or statutory penalties;
- 26 14. For all interest as allowed by law;
- 27 15. For all costs and disbursements incurred in this suit;
- 28 16. Reasonable attorney's fees where available by law, including but not limited to, pursuant

1 to, Labor Code section 2698 *et seq.*, Code of Civil Procedure section 1021.5, and/or
2 other applicable laws; and

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

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

6
7 Dated: September 25, 2025

MM LAW, APC

8 By Maralle Messrelia
9 Maralle Messrelia, Esq.
10 Attorney for Plaintiff,
11 ENRIQUE ORTIZ RAFAEL
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28