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JOSE IVAN GARCIA ESPINOZA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

JOSE IVAN GARCIA ESPINOZA, an
individual,

Plaintiff,

vs.

DILLIWALA INDIAN KITCHEN, an
entity of unknown form; MANINDER TEJ,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 24STCV26632

COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION
AS EXEMPT (IWC WAGE ORDER
NO. 5);**
- 2. FAILURE TO PAY PREMIUM
OVERTIME/DOUBLE TIME
WAGES (Cal. *Labor Code* §§ 510,
511, 1194, 1198; IWC Wage Order
No. 5);**
- 3. FAILURE TO PAY MINIMUM
WAGES (Cal. *Labor Code* §§1194,
1194.2, 1997, 1197.1, 1198; IWC
Wage Order No. 5)**
- 4. FAILURE TO PROVIDE TIMELY
OFF DUTY MEAL PERIODS (Cal.
Labor Code §§ 226.7, 512; IWC Wage
Order No. 5)**
- 5. FAILURE TO PROVIDE REST
PERIODS (Cal. *Labor Code* § 226.7;
IWC Wage Order No. 5);**
- 6. WAITING TIME PENALTIES (Cal.
Labor Code §226; IWC Wage Order
No. 5);**
- 7. FAILURE TO PAY WAGES DUE
UPON TERMINATION (Cal. *Labor*
Code §§201-203);**
- 8. FAILURE TO REIMBURSE
BUSINESS EXPENSES (Cal. *Labor*
Code §2802);**

- 1 9. FAILURE TO PAY A UNIFORM
2 MAINTENANCE ALLOWANCE
(Cal. Labor Code §2802);
3 10. FAILURE TO PAY SPLIT SHIFT
4 PREMIUMS Cal. Labor Code §§1194,
5 1997; IWC Wage Order No. 5);
6 11. FAILURE TO ALLOW
7 INSPECTION OF EMPLOYMENT
8 RECORDS (Cal. Labor Code
9 §1198.5); and
10 12. UNFAIR COMPETITION (Cal. Bus.
11 & Prof. Code §§17200 et seq.)

12 **DEMAND FOR A JURY TRIAL**

13 JOSE IVAN GARCIA ESPINOZA (“Plaintiff”) alleges the following:

14 **I. JURISDICTION AND VENUE**

15 1. This Court has jurisdiction over this Complaint under *Code of Civil Procedure*
16 §410.10 and *Business & Professions Code* §§ 17200 et seq.

17 2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
18 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
19 herein, occurred in Los Angeles County and because Defendants Dilliwala Indian Kitchen and
20 Maninder Tej, owned and operated their restaurant in Los Angeles County.

21 **II. PARTIES**

22 3. At all times relevant hereto, Plaintiff Jose Ivan Garcia Espinoza (hereinafter
23 “Plaintiff”) was an individual over age 18 and a resident of Ontario, California.

24 4. Plaintiff is informed and believes and thereon alleges that at all times material
25 hereto, Defendant Dilliwala Indian Kitchen (“DIK”), has been, and is an entity of unknown
26 form, with a principal place of business at 303 S. Diamond Bar Blvd., Diamond Bar, CA
27 91765. Plaintiff is informed and believes and thereon alleges that at all times material hereto
28 DIK has been authorized to do business and has been doing business in the State of California.

5. Plaintiff is informed and believes and thereon alleges that Defendant Maninder
Tej (“Maninder”) (collectively with DIK “Defendants”) is an individual, who at all times
relevant herein, was a resident of Los Angeles County. Maninder is the owner of DIK.

1 6. Plaintiff is informed and believes and thereon alleges, that at all times relevant
2 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
3 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
4 herein alleged, were acting within the course and scope of such agency or employment, and
5 with the approval and ratification of each of the other Defendants.

6 7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
7 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
8 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
9 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
10 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
11 individual person who owned, controlled, or managed the business for which Plaintiff worked
12 and/or who directly or indirectly exercised operational control over the wage policies of
13 Plaintiff. These DOE Defendants held ownership, officer, director and/or executive positions
14 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
15 included decision-making responsibility for, and establishment of, wage and hour violations for
16 Defendants which have damaged Plaintiff. Therefore, Does 1 through 100, in addition to the
17 remaining Defendants, are “employers” as a matter of law and are liable on the causes of action
18 alleged herein.

19 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
20 through 100 are, and at all times relevant hereto were, persons, corporations or other business
21 entities organized and existing under and by virtue of the laws of the State of California, and
22 are/were qualified to transact and conduct business in the State of California, and did transact
23 and conduct business in the State of California, and are thus subject to the jurisdiction of the
24 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
25 employ persons, conduct business and engage in wage and hour violations in the County of Los
26 Angeles.

27 9. Plaintiff is further informed and believes, and thereon alleges, that each of the
28 fictitiously named Defendants aided and assisted the named Defendants in committing the

wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each Defendant.

III. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF ACTION

Employment Information

10. Plaintiff was an employee of DIK since in or about September 2020. Plaintiff worked as a Cook for DIK. Plaintiff's job entailed preparing meals, cooking meals and all duties relating to the kitchen. Plaintiff was paid a biweekly salary of \$1,600.00 initially and later \$2,200 no matter how many hours he worked. He typically worked 6 days a week and 54 or more hours per week. He was employed at DIK until November 5, 2023, when Plaintiff was wrongfully terminated.

Wage and Hour Violations

11. The employment by DIK of Plaintiff is governed by Industrial Welfare Commission Wage Order 5, which covers those persons in the public housekeeping industry.

12. Plaintiff was willfully misclassified as exempt in violation of Wage Order No. 5.

13. Plaintiff was not paid overtime/double time.

14. Plaintiff was not paid minimum wages.

15. Plaintiff was not afforded any meal/rest breaks while he worked at DIK.

16. As a result of Defendants' failure to afford Plaintiff overtime/double time, minimum wages, meal/rest breaks, split shift premium pay, the wage statements issued to him did not comply with Labor Code §226 and California Industrial Welfare Commission ("IWC") Wage Order 5 in that they did not accurately reflect all wages earned and due and owing.

17. As a further result of Defendants' failure to pay overtime/double time, minimum wages, afford meal/rest breaks, split shift premium pay, to Plaintiff, when Plaintiff left their employ, he was not timely paid all wages due him, as required by Labor Code §§ 201, 202 and Wage Order No. 5.

18. Plaintiff was not reimbursed for his necessary business expenses.

19. Plaintiff was not provided a uniform maintenance allowance.

1 20. Plaintiff was not paid spilt shift premium pay.

2 21. Defendants failed to provide Plaintiff with his requested employment records.

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

7 **FIRST CAUSE OF ACTION**

8 **WILLFUL MISCLASSIFICATION AS EXEMPT**

9 **(Wage Order No. 5 By Plaintiff Against all Defendants and Does 1-100)**

10 23. Plaintiff realleges and incorporates by reference all of the allegations set forth in
11 this Complaint.

12 24. Defendants misclassified Plaintiff as an exempt employee rather than non-
13 exempt in violation of IWC Wage Order No. 5, for its own financial benefit.

14 25. The California Industrial Welfare Commission Wage Order No. 5 identifies
15 three exemptions to the provisions of the wage order: executive exemption, administrative
16 exemption, and professional exemption. None of the exemptions apply to Plaintiff.

17 26. On information and belief Defendants decided to wrongfully treat Plaintiff as an
18 exempt employee.

19 27. Plaintiff did not meet the requirements of being “salary exempt” as set forth by
20 California Labor Code § 515(a). Plaintiff was not allowed to make independent decisions.
21 Plaintiff did not manage any employees of Defendants. He did not have authority to hire or fire
22 employees. Further, Plaintiff did not have independent judgment or discretion in his job
23 position. Plaintiff performed more hourly work than management work.

24 28. Defendants thus improperly classified Plaintiff as exempt from the wage and
25 hour requirements set forth in the Labor Code and IWC Wage Order No. 5, because he did not
26 qualify as exempt.

27 29. Because of this misclassification, Plaintiff suffered damages as a result of
28 Defendants’ violation of IWC Wage Order No. 5 in an amount according to proof.

1 30. Based on Defendants' conduct as alleged herein. Defendants are liable for
2 damages and statutory penalties pursuant to Labor Code §226, Labor Code §218.5 and
3 penalties pursuant to Labor Code §§203 and 206.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

6 **(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order 5 By Plaintiff Against all**
7 **Defendants and Does 1-100)**

8 31. Plaintiff realleges and incorporates by reference all of the allegations set forth in
9 this Complaint.

10 32. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
11 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 5, Defendants were required to
12 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
13 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
14 hours on the seventh (7th) consecutive day of any work week. Further, Defendants were
15 required to compensate Plaintiff with premium pay for all double-time performed, for hours
16 worked in excess of twelve (12) hours per workday and for work in excess of eight hours on
17 any seventh day of a workweek.

18 33. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
19 who had not been paid overtime compensation could recover the unpaid balance of the full
20 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
21 fees and costs of suit.

22 34. California Labor Code section 510, subdivision (a), states in relevant part:
23 Any work in excess of 12 hours in one day shall be compensated at the rate of
24 no less than twice the regular rate of pay for an employee. In addition, any work
25 in excess of eight hours on any seventh day of a workweek shall be compensated
26 at the rate of no less than twice the regular rate of pay of an employee.

27 35. California Labor Code section 1198 provides,
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1 The maximum hours of work and the standard conditions of labor fixed by the
2 commission shall be the maximum hours of work and the standard conditions
3 of labor for employees. The employment of any employee for longer hours than
4 those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.

6 36. Pursuant to IWC Wage Order No. 5-2001, § 3, "Employment beyond eight (8)
7 hours in any workday is permissible provided the employee is compensated for such overtime
8 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
9 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
10 workday..."

11 37. California Labor Code section 558 provides in pertinent part:

12 (a) Any employer or other person acting on behalf of an employer who
13 violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the
15 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

16 (1) For any initial violation, fifty dollars (\$50) for each underpaid
17 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

18 (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was
20 underpaid in addition to an amount sufficient to recover underpaid
wages.

21 (3) Wages recovered pursuant to this section shall be paid to the affected
22 employee...

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

25 38. Pursuant to Cal. Labor Code §558.1:

26 (a) Any employer or other person acting on behalf of an employer, who
27 violates, or causes to be violated, any provision regulating...hours and days of
28 work in any order of the Industrial Welfare Commission, or violates, or causes

1 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
2 such violation.

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

7 (c) Nothing in this section shall be construed to limit the definition of
8 employer under existing law.

9 39. Maninder is a person acting on behalf of DIK and is therefore liable to Plaintiff
10 as an employer. Maninder caused the laws relating to overtime/double time to be violated.

11 40. Plaintiff worked between about 9 or more hours per day, 6 days per week.
12 Throughout Plaintiff’s employment, Defendants failed and refused to pay and properly pay
13 overtime/double time compensation to Plaintiff as required by law.

14 41. Plaintiff worked approximately 14 hours per week of overtime/double time. At
15 times, Plaintiff was required to work in excess of 12 hours per day when he cooked for catering
16 events. However, Plaintiff was never paid for the hours he worked overtime/double time.

17 42. The foregoing overtime/double time compensation is owed and unpaid. As a
18 direct and proximate result of Defendants’ failure and refusal to pay overtime/double time,
19 Plaintiff suffered damages in the amount of at least \$151,787.52, according to proof at trial.

20 43. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime/double
21 time wages against employers and those individuals acting in their behalf. Plaintiff requests
22 that this Court assess said penalty against Defendants in an amount to be proven at trial.

23 44. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
24 counsel in order to enforce Plaintiff’s rights to overtime/double time pay, is entitled to recover
25 his attorneys’ fees, costs and interest.

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1 **THIRD CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
3 **119, IWC Wage Order No. 5 – By all Plaintiff Against all Defendants and Does 1 through**
4 **100)**

5 45. Plaintiff realleges and incorporates by reference all of the allegations set forth in
6 this Complaint.

7 46. *Labor Code* § 1197 states the California requirement that employees must be
8 paid at least the minimum wage fixed by the Commission, and any payment of less than the
9 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
10 less than the legal minimum wage... to recover in a civil action the unpaid balance of the full
11 amount of this minimum wage.” IWC Wage Order No. 5 also obligates employers to pay each
12 employee minimum wages for all hours worked. These minimum wage standards apply to each
13 hour employees worked for which they were not paid. Therefore, an employer’s failure to pay
14 for any particular hour of time worked by an employee is unlawful, even if averaging an
15 employee’s total pay over all hours worked, paid or not, results in an average hourly wage
16 above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

17 47. Here, Plaintiff was not paid minimum wages due to Defendants’ failure to afford
18 Plaintiff compliant meal/rest breaks. Further, Defendants paid him a salary below minimum
19 wage given the number of hours he worked.

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

23 49. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
24 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
25 *Code* § 1194. Where an employee, such as Plaintiffs are not paid for all hours worked under
26 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
27 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
28 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime

1 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
2 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
3 (N.D. Cal. 2016).

4 50. Plaintiff suffered and continued to suffer losses related to the use and
5 enjoyment of compensation due and owing to him as a direct result of Defendants' unlawful
6 acts and Labor Code violations in the amount of at least \$151,787.52, according to proof at
7 trial.

8 51. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
9 wages against employers and those individuals acting on their behalf. Plaintiff requests that
10 this Court assess said penalty against Defendants in an amount to be proven at trial.

11 52. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and
12 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants
13 owe him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
14 according to proof.

15 **FOURTH CAUSE OF ACTION**

16 **(For Failure to Provide Meal Breaks in violation of Cal. Labor Code §26.7– By Plaintiff**
17 **Against all Defendants and Does 1 through 100)**

18 53. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 this Complaint.

20 54. California Labor Code §226.7(a) prohibits an employer from requiring an
21 employee to work during any meal period mandated by an applicable Industrial Wage Order.
22 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
23 employee to work during a meal or rest break or recovery period mandated pursuant to an
24 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
25 Commission..."

26 55. California Labor Code §1198 makes unlawful the employment of an employee
27 under conditions the IWC prohibits.
28

1 56. Wage Order No. 5 provides, in relevant part: "No employer shall employ any
2 person for a work period of more than five (5) hours without a meal period of not less than 30-
3 minutes, except that when a work period of not more than six (6) hours will complete the day's
4 work the meal period may be waived by mutual consent of the employer and the employee."

5 57. Wage Order No. 5 further provides, in relevant part: "Unless the employee is
6 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
7 duty' meal period and counted as time worked."

8 58. Section 512(a) of the California Labor Code provides, in relevant part, that:
9 An employer may not employ an employee for a work period of more than five
10 hours per day without providing the employee with a meal period of not less
11 than 30-minutes, except that if the total work period per day of the employee is
12 no more than six hours, the meal period may be waived by mutual consent of
13 both the employer and employee. An employer may not employ an employee for
14 a work period of more than 10 hours per day without providing the employee
15 with a second meal period of not less than 30-minutes, except that if the total
16 hours worked is no more than 12 hours, the second meal period may be waived
17 by mutual consent of the employer and the employee only if the first meal
18 period was not waived.

19 59. The Labor Code and Wage Order provisions cited above require California
20 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
21 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
22 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
23 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
24 the fifth hour of their shifts.

25 60. Plaintiff was not afforded any meal breaks.

26 61. Defendants further violated IWC Wage Order No. 5 and Labor Code
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1 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
2 of pay for each work day that the meal period was not provided, in an amount according to
3 proof. This amount remains owed and unpaid.

4 62. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
5 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
6 § 226.7(b).

7 63. As a direct and proximate result of DIK's unlawful conduct as alleged herein,
8 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost
9 interest, in the amount of at least \$151,787.52, to be established at trial, and is entitled to
10 recover economic and statutory damages, attorneys' fees and penalties and other appropriate
11 relief due to DIK's violations of the California Labor Code and the applicable IWC Wage
12 Orders.

13 **FIFTH CAUSE OF ACTION**

14 **(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7– By Plaintiff**
15 **Against all Defendants and Does 1 through 100)**

16 64. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 65. Labor Code § 226.7 and Wage Order No. 5 provide that employers shall
19 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
20 per four hours of work, or major fraction thereof.

21 66. Labor Code § 226.7 and Wage Order No. 5 provide that if an employer fails to
22 provide an employee with rest periods in accordance with those provisions, the employer shall
23 pay the employee one hour of pay at the employee's regular rate of compensation for each
24 workday that the rest periods were not so provided.

25 67. Defendants have intentionally and improperly not afforded any rest periods to
26 Plaintiff in violation of Labor Code § 226.7 and Wage Order No. 5.

27 68. At all times relevant hereto, Plaintiff has worked 9 or more hours daily.
28

1 75. Plaintiff realleges and incorporates by reference all of the allegations set forth in
2 this Complaint.

3 76. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
4 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns or
5 is terminated from employment, unpaid wages are due and payable within 72 hours of
6 resignation or termination.

7 77. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
8 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
9 paid, not to exceed thirty days.

10 78. Plaintiff was discharged from Defendants' employ and Defendants willfully
11 failed to pay overtime/double time, minimum wages, afford meal/rest breaks and did not pay
12 him premium pay for meal/rest breaks not afforded and split shifts.

13 79. Defendants terminated Plaintiff on November 5, 2023, yet failed to pay him
14 wages due to him.

15 80. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
16 he was not timely paid, not to exceed 30 days' wages.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **(Cal. Labor Code §2802 By Plaintiff Against all Defendants and Does 1 through 100)**

20 81. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 82. Labor Code §2802 requires employers to indemnify employees for all necessary
23 expenditures incurred by employees in the discharge of their duties.

24 83. At all times relevant herein, Defendants were aware that Plaintiff was using his
25 personal vehicle for business to attend catering events and his cell phone, but failed to
26 indemnify Plaintiff for all his business-related expenses, including wear and tear expenses, in
27 accordance with Labor Code §2802.

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1 84. As a result of Defendants' conduct, Plaintiff suffered damages in an amount,
2 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
3 incurred in the discharge of his duties.

4 85. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
5 his unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

6 **NINTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE UNIFORMS AND A MAINTENANCE ALLOWANCE**

8 **(Cal. Labor Code §2802 By Plaintiff Against all Defendants and Does 1 through 100)**

9 86. Plaintiff realleges and incorporates by reference all of the allegations set forth in
10 this Complaint.

11 87. Under California law, if an employer requires non-exempt employees to wear a
12 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
13 §2802.

14 88. In addition to the cost of the uniform, the employer must provide non-exempt
15 employees with reasonable maintenance of the uniforms. The employer can either maintain the
16 uniform itself, or pay the employee a weekly maintenance allowance.

17 89. An employer may never impose a financial burden on employees, with respect
18 to purchasing or maintaining clothing, which would reduce the employee's wage rate below the
19 minimum wage.

20 90. Here, Plaintiff was required to purchase certain clothing and shoes for work.

21 91. Defendants failed to purchase the clothing for Plaintiff nor reimburse him for the
22 cost thereof.

23 92. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
24 entitled to recovery from Defendants for reimbursement of necessary expenditures including
25 interest and attorneys' fees.

26 93. As a proximate result of the aforementioned violations of Labor Code § 2802,
27 Plaintiff has been damaged in an amount according to proof at the time of trial.
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1 101. Plaintiff realleges and incorporates by reference all of the allegations set forth in
2 this Complaint.

3 102. California Labor Code Section 1198.5 provides:

4 (a) Every current and former employee, or his or her representative, has the right
5 to inspect and receive a copy of the personnel records that the employer
6 maintains relating to the employee's performance or to any grievance concerning
7 the employee.

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

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

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

26 103. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are
27 required to keep accurate payroll records on each employee, and such records must be made
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1 readily available for inspection by the employee upon reasonable request. The employer must
2 also maintain accurate production records.

3 104. On or about October 11, 2024, Plaintiff's counsel issued a written request to
4 DIK for copies of his personnel records.

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

10 106. As a direct result and consequence of Defendants' failure and refusal to permit
11 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
12 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
13 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
14 penalty of \$750 based upon Defendants' violation of §1198.5.

15 **TWELFTH CAUSE OF ACTION**

16 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code**
17 **§17200 et. seq. – By Plaintiff Against all Defendants and Does 1 through 100)**

18 107. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 this Complaint.

20 108. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair
21 competition, which shall mean and include any "unlawful and unfair business practices."

22 109. Defendants' conduct as alleged herein has been and continues to be unfair,
23 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
24 affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5.
25 Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and
26 therefore has standing to bring this suit for restitution.

27 //

28 //

1 110. Paying overtime/double time, minimum wages, affording employees' proper
2 meal/rest breaks and paying premium pay for split shifts are fundamental public policies of the
3 State of California. It is also the public policy of this State to enforce minimum labor standards,
4 to ensure that employees are not required or permitted to work under substandard and unlawful
5 conditions, and to protect those employers who comply with the law from losing competitive
6 advantage to other employers who fail to comply with labor standards and requirements.
7

8 111. Defendants failed to pay overtime/double time, minimum wages, afford
9 meal/rest breaks, pay split shift premium pay, reimburse expenses and provide a uniform
10 maintenance allowance to Plaintiff. Further, Defendants failed to provide Plaintiff with his
11 personnel records.

12 112. Through the conduct alleged herein, Defendants acted contrary to these public
13 policies and has thus engaged in unlawful and/or unfair business practices in violation of
14 Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits, and
15 privileges guaranteed to employees under California law.

16 113. Defendants regularly and routinely violated the following statutes and
17 regulations with respect to Plaintiff:

- 18 (a) Willful misclassification as exempt (Wage Order No. 5);
 - 19 (b) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No.
20 5 as amended (failure to pay overtime/double time);
 - 21 (c) *Labor Code* § 1197 and Wage Order No. 5 (failure to pay minimum
22 wages);
 - 23 (d) *Labor Code* § 226 (failure to afford meal/rest breaks);
 - 24 (e) *Labor Code* § 226 (failure to provide accurate wage statements to
25 employees at the time of payment of wages);
 - 26 (f) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
 - 27 (g) *Labor Code* § 2802 (failure to reimburse business expenses);
- 28

1 (h) *Labor Code* § 2802 (failure to provide uniforms and a maintenance
2 allowance);

3 (i) *Labor Code* §§ 1194, 1197 (failure to pay split shift premiums); and

4 (j) *Labor Code* §1198.5 (failure to allow inspection of employment
5 records).

6 114. By engaging in these business practices, which are unfair business practices
7 within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, Defendants harmed Plaintiff and
8 gained an unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is
9 entitled to obtain restitution of these funds.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
13 and against Defendants, and each of them, as follows:

14 1. For compensatory damages in the amount of unpaid overtime/double time due to
15 Plaintiff, in the amount of at least \$151,787.52, according to proof;

16 2. For compensatory damages in the amount of unpaid minimum wages due to
17 Plaintiff, in the amount of at least \$151,787.52, according to proof;

18 3. For compensatory damages for lost wages and employment benefits, in the
19 amount of at least \$151,787.52, according to proof;

20 4. For compensatory damages in the amount of Plaintiff's out of pocket expenses
21 and/or reimbursement of monies incurred while performing Defendant's business-related
22 duties, plus interest, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

23 5. For compensatory damages in the amount of Plaintiff's uniform maintenance
24 expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

25 6. For prejudgment interest accrued on all due and unpaid overtime/double time
26 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
27 *Code* §§218.6 and 1194(a), according to proof;

28 7. Premium pay for split shift premium wages;

8. For an award of consequential damages, according to proof;
9. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each workday that a meal and/or rest period was not provided;
10. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
11. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
12. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 226.7, according to proof;
14. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to *Cal. Labor Code* §§218.5, 1198.5, 2802, and/or *Cal. Code Civ. Proc.* §1021.5;
15. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;
16. For other injunctive relief ordering Defendants to notify Plaintiff that he has not been paid the proper amounts in accordance with California law;
17. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);
18. For prejudgment interest, according to proof; and
19. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Jose Ivan Garcia Espinoza hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

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LIPELES LAW GROUP, APC

Date: October 11, 2024

By: Camm Sublette
Camm L. Sublette
Attorneys for Plaintiff
Jose Ivan Garcia Espinoza