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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

ALEJANDRO GOMEZ RODRIGUEZ, an
individual,

Plaintiff,

vs.

FIVE BROTHERS FENCE INC., a California
corporation; DINO CRIFASI, an individual; and
DOES 1-15

Defendants.

Case No. 30-2024-01449540-CU-OE-CJC

COMPLAINT FOR DAMAGES

Assigned for All Purposes

Judge Nico Dourbetas

DEMAND FOR JURY TRIAL

PLAINTIFF ALEJANDRO GOMEZ RODRIGUEZ ("PLAINTIFF"), an individual, against
DEFENDANTS FIVE BROTHERS FENCE INC., a California corporation, DINO CRIFASI, an
individual, and DOES 1-15 ("Defendant DOES") (collectively "DEFENDANTS"), alleges on
information and belief, except for his own acts and knowledge which are based on personal
knowledge, the following:

I. INTRODUCTION

1. PLAINTIFF brings this action individually against DEFENDANTS for engaging in
a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws including, *inter alia*:

- a. Misclassification of employees as independent contractors;
- b. Failure to provide rest periods;
- c. Failure to provide meal periods;
- d. Failure to pay minimum wages;
- e. Failure to pay overtime wages;
- f. Failure to pay wages when due;
- g. Failure to provide accurate itemized wage statements;
- h. Failure to reimburse for required business expenses;
- i. Failure to timely pay wages upon termination of employment.

3. PLAINTIFF seeks recovery of all individual damages arising from his employment with DEFENDANTS.

II. PARTIES

4. PLAINTIFF ALEJANDRO GOMEZ RODRIGUEZ ("PLAINTIFF"), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in Orange County.

5. DEFENDANT FIVE BROTHERS FENCE INC., a California corporation, registered with the California Secretary of State as entity No. 5837438, that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

6. Defendant DINO CRIFASI is, on information and belief, a California resident and does business in California. Dino Crifasi is the Registered Agent, Chief Executive Officer, Chief Financial Officer, Secretary of Five Brothers Fence Inc. On information and belief, at all relevant times, Dino Crifasi has been an owner, director, officer, or managing agent of Five Brothers Fence Inc.

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7. Defendant DOES 1-15 (“Defendant DOES”) are persons and/or entities that at all relevant times mentioned herein conducted and continue to conduct substantial and regular business throughout California.

8. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of DEFENDANT DOES 1 through 15, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of DOES 1 through 15, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 15, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

9. DEFENDANTS own, operate, and/or manage an outdoor fence installation company performing work in an around Southern California, including Orange County.

10. DEFENDANTS employed PLAINTIFF between approximately 2003 and October 2023, as an independent contractor and paid on an hourly basis.

III. DEFENDANTS' LIABILITY

11. PLAINTIFF, at all relevant times, was an employee of DEFENDANTS, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

12. Section 558 of the California Labor Code provides that “any employer *or other person* acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

13. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting either individually or as an officer, agent, or employee of another person, who pays or causes

1 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
2 or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

3 14. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
4 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the
5 employer’s failure to pay appropriate wages to its employees, and, since liability under either 558
6 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
7 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
8 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
9 Cal.App.4th 1112, 1145-1146.

10 15. Section 558.1 of the California Labor Code provides that “any employer *or other*
11 *person acting* on behalf of an employer, who violates, *or causes to be violated*, any provision
12 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
13 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802,
14 may be held liable as the employer for such violation.” (*Lab. Code* § 558.1(a).) Section 558.1(b)
15 identifies the “other person acting on behalf of an employer” includes “owner, director, officer, or
16 managing agent” of the employer. (*Lab. Code* § 558.1(b).)

17 16. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
18 each of them, are subject to penalties for their failure to pay PLAINTIFF the appropriate wages as
19 complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

20 17. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
21 each of them, are subject to liability for their failure to pay PLAINTIFF the appropriate wages as
22 complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

23 18. DEFENDANTS have been personally involved in the purported violations and/or
24 had sufficient participation in the employer, such that DEFENDANTS may be deemed to have
25 contributed to, and “caused” the labor code violations alleged.

26 19. At all relevant times, each DEFENDANT, whether named or fictitious, was the
27 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
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1 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
2 ratified the acts of the other.

3 20. Each DEFENDANT, whether named or fictitious, exercised control over
4 PLAINTIFF'S wages, working hours, and/or working conditions.

5 21. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
6 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
7 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

8 **IV. JURISDICTION AND VENUE**

9 22. This Court has jurisdiction over this Action pursuant to the California Code of Civil
10 Procedure, Section 410.10.

11 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
13 DEFENDANTS (i) currently maintain and at all relevant times-maintained offices and facilities in
14 this County, and (ii) committed the wrongful conduct herein alleged in this County against
15 PLAINTIFF.

16 **V. FACTUAL ALLEGATIONS**

17 **A. Misclassification as Independent Contractor**

18 24. DEFENDANTS own, operate, and/or manage a fencing installation company in
19 Southern California, including Orange County.

20 25. DEFENDANTS hired PLAINTIFF as an independent contractor where he installed
21 fences and glass and concrete for DEFENDANTS' projects and jobsites for nearly twenty (20) years.

22 26. DEFENDANTS maintained a practice to misclassify PLAINTIFF as independent
23 contractors to avoid employer obligations such as payroll taxes, paying minimum and overtime
24 wages, and provide to rest and meal periods.

25 27. PLAINTIFF performed work within the usual course of DEFENDANTS' business.
26 DEFENDANTS exerted control and directed in PLAINTIFF'S performance of work under both the
27 terms of the contract and in actual performance. PLAINTIFF was not customarily engaged in an
28 independently established trade, occupation, or business.

1 28. DEFENDANTS nonetheless willfully misclassified PLAINTIFF as an independent
2 contractor to unlawfully avoid their obligations as an employer.

3 29. PLAINTIFF was a non-exempt employees entitled to minimum wages, overtime
4 wages, and meal and rest periods.

5 30. As a result of DEFENDANTS' misclassification practices, DEFENDANTS
6 consistently and routinely violated numerous provisions of California Labor Code and applicable
7 IWC Wage Order resulting in damage to PLAINTIFF.

8 B. Rest Period Violations

9 31. DEFENDANTS required PLAINTIFF to work in excess of four (4) hours without
10 being provided ten (10) minute rest periods as a result of DEFENDANTS' policies and practices.
11 As a general practice, DEFENDANTS failed to provide PLAINTIFF with rest periods and only
12 provided truncated meal periods.

13 32. Further, for the same reasons DEFENDANTS denied PLAINTIFF his first rest
14 period of at least ten (10) minutes for shifts worked of at least two (2) to four (4) hours, PLAINTIFF
15 was denied a first and second rest period of at least ten (10) minutes for shifts worked of between
16 six (6) and eight (8) hours, and a first, second, and third rest period for shifts worked in excess of
17 ten (10) hours.

18 33. Specifically, DEFENDANTS maintained a general practice that required
19 PLAINTIFF to forfeit rest periods. PLAINTIFF was required to skip his rest periods as result of
20 DEFENDANTS' policies and practices. When PLAINTIFF did ask for a rest period,
21 DEFENDANTS' managers refused to provide a rest period and therefore PLAINTIFF forfeited
22 these breaks.

23 34. PLAINTIFF was also not provided with one-hour wages *in lieu* thereof, and as a
24 result, PLAINTIFF was denied their proper rest periods by DEFENDANTS and DEFENDANTS'
25 managers.

26 35. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
27 required to provide rest periods to PLAINTIFF per every four (4) hours worked or major fraction
28 thereof or provide the employee one (1) hour of pay at the employee's regular rate of compensation

1 for each workday the rest period is not provided. During the entirety of PLAINTIFF'S employment
2 DEFENDANTS required PLAINTIFF to work through rest periods without paying him in
3 accordance with Industrial Wage Orders. As a result, PLAINTIFF forfeited his regular wages by
4 working without compensation at the applicable wage and rates. DEFENDANTS had a uniform
5 policy to not pay PLAINTIFF all rest premiums owed.

6 C. Meal Period Violations

7 36. DEFENDANTS further require PLAINTIFF to work during and/or postpone the
8 meal break during what was scheduled to be PLAINTIFF'S off-duty meal period due to
9 DEFENDANTS' policies and practices. DEFENDANTS required PLAINTIFF to work through his
10 meal period for shifts worked of between six (6) and ten (10) hours.

11 37. Specifically, DEFENDANTS did not provide PLAINTIFF with designated meal
12 periods, which resulted in PLAINTIFF eating between tasks or when DEFENDANTS' managers
13 were not looking. DEFENDANTS' Managers verbally reprimanded PLAINTIFF when he
14 attempted to take meal periods and directed PLAINTIFF to finish their work.

15 38. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
16 required to provide meal periods of not less than thirty (30) minutes to PLANITIFF for each work
17 period of more than five (5) hours, except when that work period is not more than six (6) and validly
18 waived or provide one (1) hour of pay at the employee's regular rate of compensation.
19 DEFENDANTS were required to provide PLAINTIFF with an off-duty meal period for workdays
20 in which these employees are required by DEFENDANT to work in excess of six (6) hours of work.

21 39. DEFENDANTS required PLANITIFF to work during what was scheduled to be off-
22 duty meal break and/or required PLAINTIFF to truncate his meal periods in order to complete more
23 work at job sites.

24 40. As a result, PLANITIFF forfeited his meal periods without compensation at the
25 applicable wage and rates. DEFENDANTS had a uniform policy to not pay PLANITIFF meal
26 premiums.

27 41. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more
28 than five (5) hours during some shifts without receiving a meal break. The nature of the work

1 performed by PLAINTIFF does not qualify for limited and narrowly construed “on-duty” meal
2 period exception. PLAINTIFF therefore forfeited meal breaks without additional compensation and
3 in accordance with DEFENDANTS’ policies and practices.

4 D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

5 42. During PLAINTIFF’S employment, DEFENDANTS failed to accurately pay
6 PLAINTIFF for all hours worked.

7 43. Specifically, DEFENDANTS did not maintain a timekeeping system and failed to
8 accurately record or otherwise track PLAINTIFF’s hours worked and instead paid PLAINTIFF
9 based on a schedule DEFENDANTS created, regardless of the time PLAINTIFF performed work.
10 For instance, DEFENDANTS compensated PLAINTIFF for an eight-hour workday even when
11 PLAINTIFF worked in excess of eight (8) hours.

12 44. As a result, PLAINTIFF regularly performed off-the-clock work. DEFENDANTS
13 failed to pay PLAINTIFF all necessary wages for attending and performing work at
14 DEFENDANTS’ direction, request, and benefit.

15 45. DEFENDANTS directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF.

17 46. DEFENDANTS controlled the work schedules, duties, protocols, applications,
18 assignments, and employment conditions of PLAINTIFF.

19 47. DEFENDANTS were able to track the amount of time PLAINTIFF spent working
20 however, DEFENDANTS failed to document, track, and pay PLAINTIFF all wages earned and
21 owed for all the work they performed, including during off-the-clock work. From time-to-time this
22 included overtime wages.

23 48. PLAINTIFF was a non-exempt employee, subject to the requirements of the
24 California Labor Code.

25 49. DEFENDANTS’ policies and practices deprived PLAINTIFF of all regular wages
26 and overtime wages owed for the off-the-clock work activities.

27 50. DEFENDANTS knew or should have known that PLAINTIFF’S off-the-clock work
28 was compensable under the law.

1 51. As a result, PLAINTIFF forfeited wages due to him for all hours worked at
2 DEFENDANTS' direction, control and benefit for the time spent while off-the-clock.
3 DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF wages for all hours
4 worked in accordance with applicable law.

5 52. Moreover, as a result, DEFENDANTS provided PLAINTIFF with a paystub that
6 failed to comply with Cal. Lab. Code § 226 and did not maintain accurate payroll and timekeeping
7 records.

8 E. Unlawful Rounding Practices

9 53. During PLAINTIFF'S employment, DEFENDANTS did not have an immutable
10 timekeeping system to accurately record and pay PLAINTIFF for the actual time PLAINTIFF
11 worked each day, including regular time, overtime hours, sick pay, meal and rest breaks.

12 54. Specifically, due to DEFENDANT's failure to implement a timekeeping system,
13 minutes and on occasion, hours of PLAINTIFF'S time worked were unaccounted for each day.
14 Specifically, DEFENDANTS' watched surveillance video to only verify if employees were late
15 but did not track the actual time these employees worked. As a result, DEFENDANTS were able
16 to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS'
17 timekeeping system for PLAINTIFF in order to avoid paying this employee for all their time
18 worked, including the applicable overtime compensation for overtime worked. As a result,
19 PLAINTIFF forfeited compensation for his time worked by working without their time being
20 accurately recorded and without compensation at the applicable overtime rates.

21 F. Timekeeping Manipulation

22 55. Due to DEFENDANT's failure to implement a timekeeping system,
23 DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in
24 DEFENDANTS' timekeeping system for PLAINTIFF in order to avoid paying these employees
25 for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks
26 and missed rest break.

27 56. As a result, PLAINTIFF, forfeited time worked by working without his time being
28 accurately recorded and without compensation at the applicable pay rates.

1 57. The mutability of DEFENDANTS' timekeeping system also allowed
2 DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal
3 breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFF
4 clocked out for thirty (30) minute meal break when in fact the employees were not at all times
5 provided an off-duty meal break. This practice is a direct result of DEFENDANT's uniform policy
6 and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day
7 or otherwise refusal to compensate them for missed meal breaks.

8 58. As a result, PLAINTIFF forfeited wages due to him for all hours worked at
9 DEFENDANTS' direction, control and benefit of DEFENDANTS. DEFENDANTS' uniform
10 policy and practice to not pay PLAINTIFF wages for all hours worked in accordance with
11 applicable law is evidenced by DEFENDANTS' business records.

12 G. Violations for Untimely Payment of Wages

13 59. Pursuant to California Labor Code section 204, PLAINTIFF is entitled to timely
14 payment of wages during his employment.

15 60. During PLAINTIFF'S employment, DEFENDANTS failed to pay PLAINTIFF all
16 minimum and overtime wages, and meal and rest premiums within the permissible time period and
17 on days designated in advance by the employer as regular payday.

18 61. As a result, DEFENDANTS failed to pay PLAINTIFF all earned wages in violation
19 of Labor Code § 204.

20 62. To the extent wages are deemed to be owed to PLAINTIFF, whose employment has
21 terminated, DEFENDANTS conduct violations Labor Code sections 201 and/or 202, and therefore
22 PLAINTIFF are entitled to waiting time penalties under Labor Code section 203, which penalties
23 are sought herein on behalf of the PLAINTIFF. DEFENDANTS' conduct as alleged herein was
24 willful, intentional, and not in good faith. Further, PLAINTIFF is entitled to seek and recover
25 statutory costs.

26 H. Failure to Reimburse

27 63. DEFENDANTS failed to indemnify PLAINTIFF for use of his personal cell phone
28 as a direct consequence of discharging work duties.

1 64. DEFENDANTS required PLAINTIFF to use personal cell phone to communicate
2 with DEFENDANTS' agents about work assignments and tasks during each shift.

3 65. DEFENDANTS failed to provide PLAINTIFF with a designated work phone and
4 failed to provide employees any reimbursement for use of their personal cell phone.

5 66. DEFENDANTS shifted the costs associated with running a business onto
6 PLAINTIFF.

7 I. Inaccurate Itemized Wage Statements

8 67. California Labor Code Section 226 requires an employer to furnish its employees an
9 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
10 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and only the last four digits of the employee's social security number or an employee
13 identification number other than a social security number, (8) the name and address of the legal
14 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 68. During PLAINTIFF'S employment, DEFENDANTS failed to issue any wage
17 statements to PLAINTIFF. DEFENDANTS issued checks to PLAINTIFF without a corresponding
18 wage statement identifying the total hours work, the applicable hourly rates in effect, the
19 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments
20 or missed meal and rest periods.

21 69. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records
22 and provide wage statements that comply with Cal. Lab. Code § 226.

23 70. PLAINTIFF suffered damages as a result of DEFENDANTS' aforementioned
24 violation because they could not promptly and easily determine from the check alone the applicable
25 hourly rate and the corresponding number of hours worked at the applicable hourly rate for this
26 remuneration.

27 71. As a result, DEFENDANTS violated Cal. Lab. Code § 226 that were knowing and
28 intentional and were not isolated or due to an unintentional payroll error due to clerical or inadvertent

1 mistake.

2 **VI. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 For Failure to Provide Rest Periods

5 (Cal. Lab. Code §§ 226.7 & 512)

6 (Plaintiff Against All DEFENDANTS)

7 72. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
8 every allegation set forth above.

9 73. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
10 DEFENDANTS to provide employees with all rest periods specified in the applicable Wage Order.
11 These laws and regulations further entitle employees to be paid one additional hour of pay at their
12 regular rate of compensation for each day of denied rest period.

13 74. PLAINTIFF was required to work in excess of four (4) hours without being provided
14 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied his first rest
15 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
16 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
17 of between six (6) and eight (8) hours, and a first, second, and third rest period for shifts worked in
18 excess of ten (10) hours. PLAINTIFF was also not provided with one-hour wages in lieu thereof.

19 75. As a result of DEFENDANTS' policies and practices, PLAINTIFF was denied his
20 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

21 76. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
22 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
23 accordance with the applicable Wage Order, one additional hour of compensation at each
24 employee's regular rate of pay for each workday that rest period was not provided.

25 77. As a proximate result of the aforementioned violations, PLAINTIFF has been
26 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
27 penalties, expenses and costs of suit.

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78. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

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1 California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS'
2 failure to accurately calculate and pay minimum wages to PLAINTIFF.

3 85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
4 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
5 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
6 the unpaid minimum wages according to proof at trial.

7 86. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
8 regard to the correct amount of time worked. As set forth herein, DEFENDANTS' uniform policy
9 and practice was to unlawfully and intentionally deny payment of wages due to PLAINTIFF for all
10 hours worked and therefore did not receive minimum wage for all hours worked as required by Cal.
11 Lab. Code § 1197.

12 87. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
13 without limitation, as a result of implementing a uniform policy and practice that denied accurate
14 compensation to PLAINTIFF in regard to minimum wages. DEFENDANTS' uniform policy and
15 practice was to unlawfully and intentionally deny accurate and full payment of wages due to
16 PLAINTIFF.

17 88. In committing these violations of the California Labor Code, DEFENDANTS failed
18 to calculate the amount of time worked and consequently underpaid the actual time worked by
19 PLAINTIFF. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
20 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
21 requirements and other applicable laws and regulations.

22 89. PLAINTIFF was paid less for time worked than he was entitled to, constituting a
23 failure to pay all earned wages.

24 90. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
25 PLAINTIFF has suffered and will continue to suffer an economic injury including the use and
26 enjoyment of wages and lost interest on such wages all to his damage in amounts in amounts which
27 are presently unknown to him, and which will be ascertained according to proof at trial.

28 91. DEFENDANTS knew or should have known that PLAINTIFF was under-

1 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
2 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform
3 corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme
4 by refusing to pay PLAINTIFF the correct wages for their time worked.

5 92. In performing the acts and practices herein alleged in violation of California labor
6 laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite
7 compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and
8 maliciously toward PLAINTIFF with a conscious disregard for his legal rights, or the consequences
9 to him, and with the intent of depriving him of his property and legal rights, and otherwise causing
10 him injury in order to increase company profits at the expense of this employee.

11 93. PLAINTIFF, therefore, request recovery of all unpaid wages, according to proof,
12 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
13 in a sum as provided by the California Labor Code and/or other applicable statutes.

14 **FOURTH CAUSE OF ACTION**

15 For Failure to Pay Overtime Compensation
16 (Cal. Lab. Code §§ 558, 510, 1194, 1198)
(Plaintiff Against All DEFENDANTS)

17 94. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
18 every allegation set forth above.

19 95. Labor Code section 558 provides for a civil penalty to be assessed against any
20 employer or other person acting on behalf of an employer who fails to compensate employees at the
21 statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40
22 hours in any workweek or who fails to compensate employees at the statutory double time rates for
23 any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day
24 of a workweek.

25 96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
26 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code
27 § 1198 further states that the employment of an employee for longer hours than those fixed by the
28 Industrial Welfare Commission is unlawful.

1 97. Pursuant to Labor Code section 558, PLAINTIFF is entitled to recover a penalty of
2 \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in
3 excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure
4 to compensate employees at the statutory double time rates for any work in excess of twelve hours
5 in one day in addition to any underpaid wages; and \$100.00 for each subsequent failure to
6 compensate employees at the statutory overtime rate for any work in excess of eight hours in one
7 day or any work in excess of 40 hours in any workweek in addition to any underpaid wages.

8 98. DEFENDANTS routinely and systematically failed to properly record accurate time
9 records for each employee showing when each employee began and ended each work period. This
10 work included overtime. By failing to properly record hours, DEFENDANTS routinely and
11 systematically failed to compensate employees at the statutory overtime rate for any work in excess
12 of eight (8) hours in one day or any work in excess of forty (40) hours in any workweek as required
13 by Labor Code section 510 and Section 3 of the applicable Wage Order.

14 99. During PLAINTIFF'S employment, PLAINTIFF was required by DEFENDANTS
15 to perform work for DEFENDANTS and was not paid for all the time worked, which included
16 overtime wages.

17 100. As a proximate result of DEFENDANTS' failure to pay overtime and/or wages as
18 alleged above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to section
19 558 as may be established according to proof at trial.

20 101. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
21 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
22 requirements and other applicable laws and regulations.

23 102. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
24 PLAINTIFF did not receive the correct overtime compensation for his time worked for
25 DEFENDANTS.

26 103. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
27 the overtime requirements of the law. For portions of PLAINTIFF'S employment, these exemptions
28 did not apply to PLAINTIFF. Further, PLAINTIFF is not subject to a valid collective bargaining

1 agreement that would preclude the causes of action contained herein this Complaint.

2 104. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
3 compensation to PLAINTIFF for the true amount of overtime worked, PLAINTIFF has suffered
4 and will continue to suffer an economic injury in amounts which are presently unknown to him, and
5 which will be ascertained according to proof at trial.

6 105. DEFENDANTS knew or should have known that PLAINTIFF was under
7 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
8 malfeasance or gross nonfeasance, to not pay him for labor as a matter of uniform company policy,
9 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
10 PLAINTIFF the correct overtime wages for their overtime worked.

11 106. In performing the acts and practices herein alleged in violation of California labor
12 laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite
13 compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and
14 maliciously toward PLAINTIFF with a conscious of and utter disregard for his legal rights, or the
15 consequences to him, and with the despicable intent of depriving him of his property and legal rights,
16 and otherwise causing him injury in order to increase company profits at the expense of these
17 employees.

18 107. Therefore, PLAINTIFF request recovery of overtime wages, according to proof,
19 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
20 in a sum as provided by the California Labor Code and/or other applicable statutes.

21 **FIFTH CAUSE OF ACTION**

22 For Failure to Pay All Earned Wages

23 (Cal. Lab. Code § 204, 210)

(Plaintiff Against All DEFENDANTS)

24 108. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
25 every allegation set forth above.

26 109. Labor Code Section 204 provides in part provides in part that "all wages, ..., earned
27 by any person in any employment are due and payable twice during each calendar month, on days
28 designated in advance by the employer as the regular paydays."

110. Plaintiff is informed and believes, and thereon alleges that DEFENDANTS did not pay PLAINTIFF all earned wages, including regular and overtime wages and meal and rest premiums, on regularly established paydays.

111. In violation of Labor Code section 204, DEFENDANTS knowingly and willfully refused to perform their obligations to compensate their employees for all wages earned.

112. Pursuant to Labor Code section 210, PLAINTIFF is entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee all of the wages earned, and \$200.00 for each subsequent failure to pay each employee all of the wages earned; in addition, pursuant to section 210, for each subsequent failure to pay in compliance with Labor Code section 204, PLAINTIFF is entitled to recover an additional amount equal to 25% of the unlawfully withheld wages.

113. As a direct and proximate result of DEFENDANTS' conduct in violation of Labor Code section 204 as alleged above, DEFENDANTS' employees have suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts according to proof at trial.

SIXTH CAUSE OF ACTION

For Failure to Pay Wages Upon Termination

(Cal. Lab. Code § 201 & 203)

(Plaintiff Against All DEFENDANTS)

114. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

115. If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. (Cal. Lab. Code § 203).

116. To date, DEFENDANTS have yet to pay PLAINTIFF all of the wages and all premiums due for missed meal breaks and missed rest breaks and DEFENDANTS have failed to pay any penalty wages owed under California Labor Code section 203.

117. Additionally, DEFENDANTS terminated PLAINTIFF's employment and have not tendered payment of wages to this employee who was underpaid for minimum and overtime wages, and/or missed meal and rest breaks, as required by law.

118. DEFENDANTS knowingly and willfully violated the laws, regulations and orders governing the wages of PLAINTIFF as described in the causes of action above.

119. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself whose employment has terminated, PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time of termination and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Business Expenses
(Cal. Lab. Code §§ 2802)
(Plaintiff Against ALL DEFENDANTS)

120. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

121. Pursuant to California Labor Code section 2802, DEFENDANTS are required to indemnify PLAINTIFF for the expenses and losses incurred during the performance of his job duties. The purpose of this statute is to prevent employers from passing their operating expenses on to their employees.

122. DEFENDANTS required PLAINTIFF to use his personal cell phone to discharge work duties but failed to reimburse PLAINTIFF for the use or cost of his cell phone.

123. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse PLAINTIFF for necessary business expenditures. DEFENDANTS sought to pay their own pockets at the expense of their employees, and instead of compensating their employees for the necessary business costs, the employer passed on its costs to its employees.

124. DEFENDANTS intentionally failed to reimburse its employees for the actual expenses incurred and thereby increased its own profits to the detriment of its employees.

125. PLAINTIFF seeks to recover these business expenditures, plus interest thereon, reasonable attorneys' fees, and costs, and statutory and civil penalties as provided by the Labor Code

1 in an amount to be proven.

2 126. Interest accrues from the date the employee incurred the necessary expenditure or
3 loss.

4 **EIGHTH CAUSE OF ACTION**

5 For Failure to Provide Accurate, Itemized Wage Statements

6 (Cal. Lab. Code §§ 226; 226.3; 1174.5)

(Plaintiff Against All DEFENDANTS)

7 127. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
8 every allegation set forth above.

9 128. Labor Code section 226 requires defendants to provide employees an accurate
10 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
11 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
12 inclusive date of the period for which the employee is paid, (7) the name of the employee and his/her
13 or his social security number, (8) the name and address of the legal entity that is the employer, and
14 (9) all applicable hourly rates in effect and the corresponding number of hours worked

15 129. DEFENDANTS did not accurately record PLAINTIFF'S time worked, wage, and
16 missed meal and rest breaks. DEFENDANTS failed to provide any wage statement in writing that
17 properly and accurately itemizes all wages, missed meal and rest periods, applicable hourly wages
18 in effect, and reporting time wages owed to PLAINTIFF and thereby also failed to set forth the
19 correct wages earned by the employees.

20 130. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
21 section 226(a) on each and every wage statement that they provided to PLAINTIFF.

22 131. By failing to keep adequate records, as required by Labor Code sections 226 and
23 1174, DEFENDANTS injured PLAINTIFF making it difficult for this employee to calculate the
24 minimum wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

25 132. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
26 226(e), 226.3, and 1174.5 for the wage statement violations committed by DEFENDANTS.

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1 **DEMAND FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and
3 severally, as follows:

4 1. On behalf of the PLAINTIFF:

5 A. Compensatory damages, according to proof at trial, including unpaid minimum and
6 overtime wages, due to PLAINTIFF, during the applicable employment period plus interest thereon
7 at the statutory rate;

8 B. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the
9 unpaid minimum wages according to proof at trial;

10 C. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
11 applicable IWC Wage Order;

12 D. The wages of Plaintiff as a penalty from the due date thereof at the same rate until
13 paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

14 E. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
15 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
16 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226;

18 F. The amount of the expenses PLAINTIFF incurred in the course of his job duties, plus
19 interest, and costs of suit;

20 G. Punitive damages in an amount to punish DEFENDANTS to be proven at trial;

21 H. An award of interest, including prejudgment interest at the legal rate;

22 I. Such other and further relief as the Court deems just and equitable; and

23 J. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

24 DATED: December 23, 2024

25 Respectfully submitted,
26 **EMRAN LAW**

27 By: Harris Emran
28 Harris Emran
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: December 23, 2024

EMRAN LAW

By: Harris Emran
Harris Emran
Attorney for PLAINTIFF