

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
MIGUEL CASTRO

ELECTRONICALLY FILED
11/12/2024 8:00 AM
Kern County Superior Court
By Alexandra Valles, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

MIGUEL CASTRO, an individual, on
his own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

ELITE CONSTRUCTORS, INC., a
California corporation; CONTINENTAL
LABOR AND STAFFING
RESOURCES, an entity of unknown
form; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: BCV-24-103863

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 16);
2. FAILURE TO PAY MINIMUM WAGES (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 16);
3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 16);
4. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 16);
5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 16);
6. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* § 2802);
7. FAILURE TO PROVIDE UNIFORM MAINTENANCE ALLOWANCE (Cal. *Labor Code* §2802);
8. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5); and
9. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 *et seq.*)

DEMAND FOR A JURY TRIAL

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

MIGUEL CASTRO ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by Elite Constructors, Inc. ("EC") and Continental Labor and Staffing Resources ("CLSR") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendants due to Defendants' systematic failure to pay overtime/double time wages, failure to pay minimum wages, failure to provide meal breaks (or pay the statutory compensation due), failure to provide rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to reimburse business expenses, failure to pay a uniform maintenance allowance and failure to allow inspection of employment records.

2. Plaintiffs have worked as employees for Defendants at EC's yard in Santa Maria, California and at various locations in Central California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendants' efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like his co-workers whom Defendants also employed during the applicable limitations period, spend their workdays in Central California, under illegal and highly regimented circumstances. That regimen results from Defendants' insistence to strictly monitor and curtail labor costs, which Defendants accomplish by not paying for all labor costs, failing to pay overtime/double time, minimum wages, refusing to provide proper meal periods, refusing to provide proper rest periods, not paying the required extra hour for missed meal/rest

1 breaks, failing to reimburse business expenses, failing to provide a uniform maintenance
2 allowance, failing to allow inspection of employment records, and by using other unlawful
3 stratagems to ensure that labor costs remain artificially low.

4 4. Plaintiff brings this class action to recover, among other things, wages and
5 penalties from unpaid wages earned and due, including but not limited to, premium
6 overtime/double time wages, minimum wages, missed meal/rest break wages, penalties for
7 failure to provide accurate itemized wage statements, failure to reimburse business expenses,
8 failure to provide a uniform maintenance allowance, failure to allow inspection of employment
9 records and interest, attorneys' fees, costs, and expenses.

10 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
11 himself and all members of the class, to compensate these workers for the unpaid wages and to
12 protect current and future workers of Defendants from being subjected to similar wage theft
13 and otherwise unlawful working conditions.

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

18 7. Pursuant to the California Labor Code, on or about November 8, 2024, Plaintiff
19 filed a notice with Labor and Workforce Development Agency (LWDA) of his intent to
20 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
21 Plaintiff further reserves the right to amend this Complaint once he completes and complies
22 with the provisions under the law.

23 JURISDICTION AND VENUE

24 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
25 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
26 *Professions Code* §§ 17200 *et seq.* Plaintiff Miguel Castro brings this Complaint on his own
27 behalf and on behalf of all persons in the Class as defined in paragraph 18 below.

28

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

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Kern County, California;
- (b) Employed as an hourly employee for Defendants in Central California;
- (c) Did not receive overtime/double time compensation required by *Labor Code* §§510 and 1194 and the applicable Wage Orders;
- (d) Did not receive minimum wages as required by *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not reimbursed necessary business expenses as required by *Labor Code* §2802;
- (i) Was not provided a uniform maintenance allowance as required by *Labor Code* §2802; and
- (j) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANTS

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

- 1 (a) A California corporation, with a principal place of business at 4241 East
2 Brundage Lane, Bakersfield, California 93307. Defendant EC has been
3 authorized to do business and has been doing business in the County of
4 Kern;
- 5 (b) The current employer of Plaintiff and the current and former employer of
6 the putative Class members;
- 7 (c) Paid Plaintiff and all Class members on an hourly basis;
- 8 (d) Failed to pay Plaintiff and all putative Class members premium
9 overtime/double time wages;
- 10 (e) Failed to pay Plaintiff and all putative Class member minimum wages;
- 11 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
12 periods and failed to provide Plaintiff and all putative Class members
13 with accurate itemized wage statements;
- 14 (g) Failed to reimburse Plaintiff and all putative Class members for their
15 necessary business expenses;
- 16 (h) Failed to provide Plaintiff and all putative Class members a uniform
17 maintenance allowance; and
- 18 (i) Failed to provide their personnel records. Each of these was a violation
19 of the *Labor Code*.

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

- 22 (j) An entity of unknown form, with a principal place of business at 509 W.
23 Ward Avenue, Ridgecrest, California 93555. Defendant CLSR has been
24 authorized to do business and has been doing business in the County of
25 Kern;
- 26 (k) The current employer of Plaintiff and the current and former employer of
27 the putative Class members;
- 28 (l) Paid Plaintiff and all Class members on an hourly basis;

- 1 (m) Failed to pay Plaintiff and all putative Class members premium
2 overtime/double time wages;
3 (n) Failed to pay Plaintiff and all putative Class member minimum wages;
4 (o) Failed to provide Plaintiff and all putative Class members with meal/rest
5 periods and failed to provide Plaintiff and all putative Class members
6 with accurate itemized wage statements;
7 (p) Failed to reimburse Plaintiff and all putative Class members for their
8 necessary business expenses;
9 (q) Failed to provide Plaintiff and all putative Class members a uniform
10 maintenance allowance; and
11 (r) Failed to provide their personnel records. Each of these was a violation
12 of the *Labor Code*.

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

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

26 15. Plaintiff is informed and believes, and based on that information and belief
27 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
28

1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

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

10 17. Plaintiff is informed and believes, and based on that information and belief
11 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
12 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
13 themselves and entered into a combination and systemized campaign of activity to *inter alia*
14 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
15 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
16 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
17 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
18 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
19 the actions of one Defendant was accomplished in concert with, and with the knowledge,
20 ratification, authorization and approval of each of the other Defendants.

21 **CLASS ALLEGATIONS**

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

23 18. The Class ("the Class") is defined as follows:

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

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

5 19. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
6 amend or modify the Class description with greater specificity or further division into
7 subclasses or limitation to particular issues.

8 **B. Maintenance of the Action**

9 20. Plaintiff brings this action individually and on behalf of himself and as
10 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
11 and 17204 and *Code of Civil Procedure* § 382.

12 **C. The Class Requisites**

13 21. At all material times, Plaintiff was a member of the Class.

14 22. The Class action meets the statutory prerequisites for maintaining a class action
15 under Code of Civil Procedure § 382 in that:

- 16 (a) The persons who comprise the Class are so numerous that the joinder of all
17 those persons is impracticable and the disposition of their claims as a Class
18 will benefit the parties and the Court;
- 19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
20 that are raised in this Complaint are common to the Class and will apply
21 uniformly to every Class member;
- 22 (c) The claims of the representative Plaintiff are typical of the claims of each
23 Class member. Plaintiff, like all Class members, has sustained damages
24 arising from Defendants’ violations of the laws of the State of California.
25 Plaintiff, and the Class members, were and are similarly or identically
26 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
27 pattern of misconduct engaged in by the Defendants;
- 28

1 (d) The representative Plaintiff has, and will continue to, fairly and adequately
2 represent and protect the interests of the Class and has retained counsel
3 who are competent and experienced in class action litigation. There are no
4 material conflicts between the claims of the representative Plaintiff and the
5 Class members that would make class certification inappropriate. Counsel
6 for the Class will vigorously assert the claims of all Class members.

7 23. The persons who comprise the Class are so numerous that joining all of them is
8 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
9 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
10 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
11 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
12 Plaintiff are experienced, qualified and generally able to conduct complex class action
13 litigation.

14 24. The Court should permit the action to be maintained as a class action under
15 *Code of Civil Procedure* § 382 because:

- 16 (a) The questions of law and fact common to the Class predominate over any
17 question affecting only individual members;
- 18 (b) A class action is superior to any other available method for fairly and
19 efficiently adjudicating the claims of the Class;
- 20 (c) The Class members are so numerous that it is impractical to bring all of
21 them before the Court;
- 22 (d) Plaintiff and other Class members will not be able to obtain effective and
23 economic legal redress unless the action is maintained as a class action;
- 24 (e) There is a community of interest in obtaining appropriate legal and
25 equitable relief for the statutory violations, and in obtaining adequate
26 compensation for the damages and injuries for which Defendants are
27 responsible in an amount sufficient to adequately compensate the Class
28 members;

- 1 (f) Without Class certification, the prosecution of separate actions by
2 individual Class members would create a risk of:
3 i. Inconsistent or varying adjudications for individual Class members
4 that would establish incompatible standards of conduct for
5 Defendants; and/or,
6 ii. Adjudication for individual Class members that would, as a
7 practical matter, dispose of other non-party members' interests, or
8 that would substantially impair or impede the non-parties' ability
9 to protect their interests, by, for example, potentially exhausting
10 the funds available from Defendants, and
11 (g) Defendants have acted or refused to act on grounds generally applicable
12 to the Classes, making final injunctive relief appropriate for the Class, as
13 a whole.

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

19 GENERAL ALLEGATIONS

20 26. At all times material hereto, Defendant EC has been and is, a construction
21 company.

22 27. Plaintiff and members of the Class were employed as Concrete Finishers and
23 other non-exempt employees by Defendants in California at various times during the Class
24 Period.

25 28. The employment by Defendants of the Class Members, and each them, is
26 governed by Industrial Welfare Commission Wage Order 16, which covers those persons
27 employed in the construction, drilling, logging and mining industries.

28 JOINT EMPLOYER ALLEGATIONS

29. Plaintiff is informed and believes and thereon alleges that EC contracted with CLSR whereby CLSR would provide them with staffing/employment services. Pursuant to that agreement, and given the amount of influence, control and direction EC and CLSR exerted over Plaintiff's employment, EC and CLSR were Plaintiff's co-employers.

30. Plaintiff is informed and believes and thereon alleges that EC and CLSR exercised control over Plaintiff's wages, hours and/or working conditions (start time, end time, etc.) such that they were joint employers.

THE CONDUCT

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

32. Starting on or about March 1, 2022 and continuing to the present, Defendants employed Plaintiff on an hourly basis as a Cement Finisher at various locations in Central California.

33. While employed by Defendants as a Cement Finisher Plaintiff is paid approximately \$21.95 per hour.

OFF-THE-CLOCK WORK

34. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585.

35. Defendants required Plaintiff and the Class to regularly perform compensable tasks pre-shift and weekend work off-the-clock for which they did not receive any compensation. Specifically, at all times relevant, Plaintiff and Class members consistently worked hours for which they were not paid because Plaintiff and the Class members were required to arrive at the yard in Bakersfield and place things in their work trucks and drive to the yard in Santa Maria for 10 minutes prior to the start of their shifts. Further, prior to September 2024, Plaintiff and Class members were required to engage in off the clock activities on the weekend and also during the week, such as sending pictures of job sites to

1 their supervisor, while off the clock. Further, Plaintiff and Class members were required to use
2 their personal cell phones off-the clock for work-related activities. Plaintiff and Class
3 Defendants were aware of Plaintiff and Class members' off the clock work.

4 36. As a result, and because they improperly treated such pre-shift time and
5 weekend work as non-compensable, Defendants failed to compensate Plaintiff and the Class
6 for such time.

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

8 37. Under California law, non-exempt employees as defined by Wage Order 16, are
9 entitled to premium wages for overtime/double time worked. Under California law, non-
10 exempt employees as defined by IWC Wage Order No. 16, are entitled to premium wages for
11 overtime worked. Under California law, an hourly paid employee is entitled to overtime pay
12 when they exceed eight hours of work in a single day, exceed 40 hours of work in a week or
13 work seven days in a row. Defendants were required to compensate Plaintiff with premium
14 pay for all double-time performed, for hours worked in excess of twelve (12) hours per
15 workday and for work in excess of eight hours on any seventh day of a workweek.

16 38. Here, at all times during the relevant time period, Plaintiff and the Class
17 routinely worked schedules such that they were due pay at overtime/double time rates. During
18 this period, it was the practice and policy of Defendants to not pay employees overtime/double
19 time. Monies for unpaid overtime/double time remain due and owing.

20 **FAILURE TO PAY MINIMUM WAGES**

21 39. Under California law, non-exempt employees as defined by IWC Wage Order
22 No. 16 are entitled to minimum wages. Labor Code Section 1197 states the California
23 requirement that employees must be paid at least the minimum wage fixed by the Commission
24 or by any applicable state or local law, and any payment of less than the minimum wage is
25 unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the
26 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
27 amount of this minimum wage." IWC Wage Order No. 16, obligates employers to pay each
28 employee minimum wages for all hours worked.

1 40. These minimum wage standards apply to each hour employees worked or were
2 subject to control by the employer for which they were not paid. Therefore, an employer's
3 failure to pay for any particular hour of time worked by an employee or subject to the
4 employer's control is unlawful, even if averaging an employee's total pay over all hours
5 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
6 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

7 41. Plaintiff and the Class were not paid minimum wages due to Defendants' failure
8 to afford proper meal/rest breaks and quarter rounding.

9 42. At all times during the relevant time period, Plaintiff and the Class routinely
10 worked schedules such that they were due pay at minimum wage rates. During this period, it
11 was the practice and policy of Defendants to not pay employees' minimum wages. Monies for
12 unpaid minimum wages remain due and owing.

13 **EXCLUSION OF BONUSES FROM REGULAR RATE OF PAY**

14 43. California law uses the terms "compensation" and "pay" interchangeably and
15 requires that all applicable remuneration, including but not limited to, commissions, and/or
16 non-discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers,
17 etc., be included when calculating an employee's regular rate of pay.

18 44. Defendants failed to properly pay and calculate wages due to excluding
19 nondiscretionary bonuses from regular rate of pay calculations. Such bonus payments are
20 required under California law to be included in an employee's regular rate of pay for wage
21 calculation. Defendants failed to do so, thereby failing to pay employees their full wages as
22 required under the Labor Code.

23 45. Plaintiff and members of the Class received bonuses that must be included when
24 calculating their regular rates of pay for purposes of wages. However, Defendants failed to
25 correctly calculate Plaintiff and members of the Class's regular rate of pay to include all
26 applicable remuneration, including, but not limited to, bonuses. Defendants issued bonuses to
27 Plaintiff and Class members 1 time per year for holidays. The bonuses were not blended into
28 Plaintiff and Class member's regular rate of pay.

1 46. Plaintiff's paystub dated March 29, 2024, shows that Bonuses are paid at the
2 same time as Overtime and for same period as Overtime, and paid at the rate of exactly 1.5
3 times base rate. Thus, the Bonuses are not incorporated into the Overtime rate.

4 47. Although Plaintiff's paystubs show that Bonuses are paid, it is unclear what
5 period the Bonus was paid in. Double Time is paid at exactly 2 times the base rate. Thus,
6 Bonuses are not incorporated into the Double Time rate.

7 48. Further, Plaintiff's paystubs dated 3/29/2024, 7/26/2024 and 2/2/2024, show that
8 Bonuses were paid, but it is unclear what period it was paid for. Sick pay was paid at the rate
9 of exactly the base rate, so the Bonuses were not incorporated into the sick pay rate.

10 **MISSED/LATE/INTERRUPTED/SHORTENED MEAL BREAKS**

11 49. Under California law, non-exempt employees as defined by IWC Wage Order
12 No. 16, are entitled to premium wages for overtime worked, a 30-minute lunch period for each
13 5 hours worked, or major fraction thereof. Non-exempt employees are entitled to one hour pay
14 at their regular pay rate for each day the requisite meal periods are not provided.

15 50. Plaintiff and Class members were routinely afforded meal breaks late after five-
16 and one-half hours of work. Also, meal breaks were frequently missed and/or interrupted. Meal
17 breaks were also shortened to 20 minutes. On days when Plaintiff and Class members worked
18 10–12-hour shifts, they were not afforded second meal breaks.

19 51. Defendants' policies and procedures were applied to all non-exempt employees
20 in California and resulted in non-exempt employees working time which was not compensated
21 by any wages in violation of Labor Code sections 510, 1194 and the IWC Wage Order No. 16.
22 As a result, Defendants owe wages at the legal overtime/double rate and minimum wage rate
23 for unpaid overtime/double time and minimum wages to each of their California non-exempt
24 employees whose daily hours were reduced and their meals periods were afforded late,
25 interrupted, shortened and/or not at all.

26 **REST PERIODS NOT AFFORDED**

27
28

1 52. Plaintiff and Class members were never afforded any rest breaks. On days when
2 Plaintiff and Class members worked 10–12-hour shifts, they were never afforded third rest
3 breaks.

4 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

5 53. As a result of Defendants’ failure to pay employees at required overtime/double
6 time rates, minimum wage rates and premium pay for late, interrupted, shortened and/or missed
7 meal/rest breaks, the wage statements issued to the employees did not comply with *Labor Code*
8 §226 and the California Industrial Welfare Commission (“IWC”) Wage Order No. 16 in that
9 they did not accurately reflect all wages earned and due and owing.

10 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

11 54. Defendants failed to reimburse Plaintiff and Class members for their necessary
12 business expenses, such as cell phone use.

13 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

14 55. Defendants failed to pay Plaintiff and Class members for the maintenance of
15 their uniforms. Defendants required Plaintiff and Class members to wear uniforms. Plaintiff
16 and Class members paid for maintenance of their uniforms themselves and were not
17 reimbursed therefor.

18 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

19 56. Defendants failed to allow Plaintiff to timely inspect his records and payroll
20 files.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME/DOUBLE TIME**

23 **(Labor Code §§510, 511, 558, 1194, 1198 and IWC Wage Order No. 16 by Plaintiffs**

24 **Against Defendants and Does 1-100)**

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

27 58. During Plaintiff’s entire employment with Defendants, pursuant to Cal. Lab.
28 Code §§510, 1194, and 1198, and IWC Wage Order No. 16, Defendants were required to

1 compensate Plaintiff and Class members with premium pay for all overtime/double time work
2 performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per
3 week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.
4 Defendants were required to compensate Plaintiff and Class members with premium pay for all
5 double-time performed, for hours worked in excess of twelve (12) hours per workday and for
6 work in excess of eight hours on any seventh day of a workweek.

7 59. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
8 who had not been paid overtime/double time compensation could recover the unpaid balance of
9 the full amount of overtime/double time wages due, including interest thereon, together with
10 reasonable attorneys' fees and costs of suit.

11 60. Pursuant to IWC Wage Order No. 16, § 3, "Employment beyond eight (8) hours
12 in any workday is permissible provided the employee is compensated for such overtime at not
13 less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
14 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday... and
15 (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any
16 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive
17 day of work in a workweek."

18 61. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

5 62. Throughout Plaintiff's and Class members' employment, Plaintiff and Class
6 members worked overtime/double time hours and were not paid overtime/double time pay due
7 to off the clock work. Further, when Plaintiff worked more than 12 hours in a day, Defendants
8 failed to pay him double time. Also, Plaintiff and Class members were not paid overtime at 1.5
9 times the base rate, but instead 1.5 times the hourly rate.

10 63. Defendants' foreman recorded the start/end times of Plaintiff and Class
11 members' shifts. The foreman would enter whatever hours he wanted for employees' clock
12 in/out times. As a result, Plaintiff and Class member' hours of work were routinely shorted.

13 64. The regular rate of pay under California law includes all remuneration for
14 employment paid, on behalf of the employer, to the employee. Employers must properly factor
15 all economic items into the regular rate of pay for purposes of calculating the overtime wages
16 due to their employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th
17 542, 554, 568 (the regular rate of pay must include the "value of any nonhourly compensation,"
18 including bonuses).

19 65. Specifically, Defendants had a company-wide policy of failing to properly pay
20 and calculate wages due. Defendants failed to correctly calculate Plaintiff and members of the
21 Class's regular rate of pay to include all applicable remuneration, including, but not limited to,
22 bonuses. Plaintiff and members of the Class received bonuses, that must be included when
23 calculating their regular rates of pay for purposes of wages. Plaintiff and Class members
24 received annual bonuses. Specifically, Plaintiff received a bonus of \$300 for holidays.
25 However, Defendants failed to correctly calculate Plaintiff and members of the Class's regular
26 rate of pay to include all applicable remuneration, including, but not limited to, bonuses.

27 66. Throughout Plaintiff's and Class members' employment, Defendants failed and
28 refused to pay and properly calculate overtime/double time compensation to Plaintiff and Class
members as required by law.

1 67. The foregoing overtime/double time compensation is owed and unpaid. As a
2 direct and proximate result of Defendants' failure and refusal to pay overtime/double time,
3 Plaintiff and Class Members suffered damages in an amount to be proven at trial.

4 68. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
5 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
6 Plaintiff's attorneys' fees, costs and interest.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES DUE TO TIME ROUNDING**

9 **(IWC Wage Order No. 16; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
10 **Against Defendants and Does 1 through 100)**

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

13 70. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a
14 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid
16 balance of the full amount of this minimum wage or overtime compensation, including interest
17 thereon, reasonable attorney's fees, and costs of suit."

18 71. *Labor Code* § 1197 states the California requirement that employees must be
19 paid at least the minimum wage fixed by the Commission, and any payment of less than the
20 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
21 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
22 the full amount of this minimum wage." IWC Wage Order 16-2001 also obligates employers
23 to pay each employee minimum wages for all hours worked. These minimum wage standards
24 apply to each hour employees worked for which they were not paid. Therefore, an employer's
25 failure to pay for any particular hour of time worked by an employee is unlawful, even if
26 averaging an employee's total pay over all hours worked, paid or not, results in an average
27 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
28 (2005).

1 72. Pursuant to IWC Wage Order No. 16, Defendants are required to pay the
2 members of the Class for all hours worked, meaning the time during which an employee is
3 subject to the control of an employer, including all the time the employee is suffered or
4 permitted to work, whether or not required to do so.

5 73. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
6 and the standard conditions of labor fixed by the commission shall be the maximum hours of
7 work and the standard conditions of labor for employees. The employment of any employee for
8 longer hours than those fixed by the order or under conditions of labor prohibited by the order
9 is unlawful.”

10 74. Defendants failed to satisfy minimum wage requirements because they
11 improperly failed to afford Plaintiff and Class members meal/rest breaks in violation of *Labor*
12 *Code* §§ 226.7, 1197, 1198 and IWC Wage Order No. 16. Further, Defendants failed to
13 accurately record Plaintiff and Class members’ start/end times of their shifts. Lastly,
14 Defendants rounded Plaintiff’s hours down to the quarter hour.

15 75. Defendants’ pattern, practice and uniform administration of corporate policy
16 regarding illegal employee compensation as described herein is unlawful and creates an
17 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the
18 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
19 the appropriate rate.

20 76. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
21 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
22 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
23 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
24 the time associated with the overtime for which they received no compensation. *See Sillah v.*
25 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
26 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
27 showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*,
28 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

77. Plaintiff and the other Class Members suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

78. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

THIRD CAUSE OF ACTION
FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS
(IWC Wage Order No. 16; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendants
and Does 1 through 100)

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

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

81. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

82. IWC Wage Order No. 16 provides, in relevant part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30-minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

1 83. IWC Wage Order No. 16, section (11)(c) further provides, in relevant part:
2 "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period
3 shall be considered an 'on duty' meal period and counted as time worked."

4 84. Section 512(a) of the California Labor Code provides, in relevant part, that:

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

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

21 86. As alleged herein, Defendants failed to relieve employees of duties for timely
22 meal breaks throughout the Class Period. Plaintiff and the members of the Class's meal periods
23 were routinely afforded late, after five- and one-half hours of work. Also, meal breaks were
24 frequently not afforded, shortened to 20 minutes and/or interrupted. Further, on days when
25 Plaintiff and Class members worked between 10-12 hours, they were not afforded second meal
26 breaks.

27 87. Under California law, employers must also record their employees' meal
28 periods: "Every employer shall keep accurate information with respect to each employee,
including the following: ... Meal periods ... shall also be recorded. Meal periods during which
operations cease ... need not be recorded." IWC Wage Order No. 16, § (7)(A)(3). Where the

1 employer has failed to keep records required by statute, the consequences of such failure should
2 fall on the employer, not the employee. In such a situation, imprecise evidence by the employee
3 can provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
4 (1988). Inasmuch as Defendants had an obligation under the record-keeping requirements of
5 the Wage Order to track meal periods unless "all work ceases", Defendants knew or should
6 have known its employees were regularly afforded late, interrupted, shortened and/or missing
7 meal periods during the Class Period.

8 88. Defendants have a policy or practice of failing to ensure that Plaintiff and
9 members of the class take proper meal periods required by California Labor Code §226.7 and
10 IWC Wage Order No. 16, §11.

11 89. By their actions in affording Plaintiff and Class members improper meal
12 periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 16 in
13 the amount of one additional hour of pay at the employee's regular rate of compensation for
14 each work period during each day in which Defendants failed to provide employees with proper
15 statutory off-duty meal periods.

16 90. Defendants also have a policy or practice of failing to pay each of their
17 employees who was not provided with a proper meal period an additional one hour of
18 compensation at each employee's regular rate of pay.

19 91. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
20 bring a private right of action to recover wages due based on the deprivation of proper meal
21 periods under Cal. Labor Code § 226.7(b).

22 92. As a direct and proximate result of Defendants' unlawful conduct as alleged
23 herein, Plaintiff and members of the Class have sustained economic damages, including but not
24 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
25 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
26 relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 16.

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS

**(Labor Code § 226.7 and IWC Wage Order No. 16 By Plaintiffs Against Defendants and
Does 1 through 100)**

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

94. Labor Code § 226.7 and IWC Wage Order No. 16 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

95. Labor Code § 226.7 and IWC Wage Order No. 16 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

96. Defendants have intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 16. Plaintiff and Class members were not afforded any rest breaks.

97. At all times relevant hereto, Plaintiff and members of the Class have worked 8.5 or more hours daily.

98. At all times relevant hereto, Defendants failed to provide proper rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 16. Plaintiff and Class members rest breaks were routinely not afforded.

99. By virtue of Defendants' unlawful failure to provide proper rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

FIFTH CAUSE OF ACTION
FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE
ITEMIZED STATEMENTS

(Labor Code §226 and IWC Wage Order No. 16 By Plaintiffs Against Defendants and Does 1 through 100)

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

101. Pursuant to IWC Wage Order No. 16, Defendants were the employers of Plaintiff and the Class.

102. Pursuant to California Labor Code sections 226 and 1174, and IWC Wage Order No. 16, section 7, Defendants are required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

103. Defendants are further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

104. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

105. Notwithstanding these provisions. Defendants have engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

106. Throughout the Class Period, Defendants intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime/double time

1 compensation, minimum wages, missed or late meal/rest periods, were not included in gross
2 wages earned by Plaintiff and members of the Class.

3 107. Further, Plaintiff's paystubs dated 7/19/2024, 8/2/2024, 8/9/2024, 8/16/2024 and
4 8/23/2024, do not list hours and rates for the item "Travel Pay".

5 108. As a result, Plaintiff and members of the Class have been injured by having been
6 deprived of the true facts pertaining to their compensation and employment.

7 109. Plaintiff and members of the Class were damaged by these failures because,
8 among other things, the failures led them to believe that they were not entitled to
9 overtime/double time compensation, minimum wages, pay for meal/rest periods not timely
10 provided, all hours worked, reporting time, even though they were so entitled and these failures
11 hindered them from determining the amounts of wages owed to them.

12 110. Plaintiff and members of the Class are entitled to the amounts provided in Labor
13 Code §226(e), plus attorneys' fees and costs.

14 111. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
15 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
16 provided by law for Defendants' improper conduct.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 ***(Labor Code §2802 By Plaintiffs Against Defendants and Does 1 through 100)***

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

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

24 114. At all times relevant herein, Defendants were aware that Plaintiff and Class
25 members were using their personal cell phones for business both on and off the clock, but
26 failed to indemnify Plaintiff and Class members for all their business-related expenses,
27 including wear and tear expenses, in accordance with Labor Code §2802. Defendants required
28 Plaintiff and Class members to use their cell phones every day for approximately 15-20 minutes

1 both on and off the clock to text/call supervisors and send pictures of jobsites. Plaintiff is
2 informed and believes and thereon alleges that at all relevant times, Defendants maintained a
3 practice of not reimbursing Plaintiff and Class Members for their work-related expenses that
4 they incurred in using their cell phones for work-related purposes.

5 115. As a result of Defendants' conduct, Plaintiff and Class Members suffered
6 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
7 business-related expenses incurred in the discharge of their duties.

8 116. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
9 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
10 costs of suit.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

13 ***(Labor Code §2802 By Plaintiffs Against Defendants and Does 1 through 100)***

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

16 118. Under California law, if an employer requires employees to wear a uniform, the
17 employer must pay for and maintain the uniform for the employee. Labor Code
18 §2802.

19 119. An employer may never impose a financial burden on employees, with respect
20 to paying for and maintaining clothing, which would reduce the employees' wage rate below
21 the minimum wage.

22 120. Here, Defendants required Plaintiff and Class members to wear uniforms
23 consisting of shirts with EC's logo. However, Plaintiff and Class members were required to
24 maintain their uniforms themselves.

25 121. Defendants failed to reimburse Plaintiff and members of the Class for their
26 uniform maintenance expenses.

27 //

28 //

122. As a proximate result of the aforementioned violations of Labor Code § 2802, Plaintiff and members of the Class have been damaged in an amount according to proof at the time of trial.

123. As a proximate result of the aforementioned violations of § 2802, Plaintiff and members of the Class are entitled to recovery from Defendants for reimbursement of necessary expenditures including interest and attorneys' fees.

EIGHTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Labor Code §1198.5 By Plaintiffs Against Defendants and Does 1 through 100)

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

125. California Labor Code Section 1198.5 provides:

- (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,..... later than 30 calendar days from the date the employer receives the request...
- (k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

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

126. Additionally, pursuant to IWC Wage Order No. 16, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

127. On or about November 8, 2024, Plaintiff's counsel issued a written request to Defendants for copies of his personnel records.

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

129. As a direct result and consequence of Defendants' failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendants' violation of §1198.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

131. Pursuant to IWC Wage Order No. 16, Defendants were the employers of Plaintiff and the Class. Defendants are also a "person" as that term is defined in Business & Professions Code §17021.

1 132. The Business & Professions Code defines unfair competition as any unlawful,
2 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
3 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1)
4 pay Plaintiff and the Class overtime/double time compensation; (2) pay minimum wages; (3)
5 pay Plaintiff and the Class for meal periods afforded late, missed and/or interrupted, (4) pay
6 Plaintiff and the Class for rest periods not afforded, (5) furnish Plaintiff and the Class with
7 accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial
8 Welfare Commission requirements, (6) reimburse business expenses, (7) provide a uniform
9 maintenance allowance, (8) provide personnel records, all in violation of Business &
10 Professions Code §§ 17200 *et seq.*

11 133. By and through the unfair and unlawful business practices described herein,
12 Defendants have obtained valuable property, money and services from the Plaintiff and the
13 Class and has deprived them of valuable rights and benefits guaranteed by law all to the
14 detriment of Plaintiff and the Class.

15 134. All the acts described herein are violations of, among other things, the Labor
16 Code and Industrial Commission Wage Order No. 16, are unlawful and in violation of public
17 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
18 constitute unfair and unlawful business practices in violation of Business & Professions Code
19 §§ 17200 *et seq.*

20 135. Plaintiff and the Class are entitled to, and do, seek such relief as may be
21 necessary to restore to them the money and property which Defendants have acquired, or of
22 which Plaintiff and the Class have been deprived by means of the above-described unfair and
23 unlawful business practices.

24 136. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
25 above-described business practices are unfair and unlawful and that injunctive relief should be
26 issued restraining Defendants from engaging in any of the above described unfair and unlawful
27 business practices in the future.

28

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

PRAYER FOR RELIEF

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

1. For compensatory damages in the amount of unpaid overtime/double time due to Plaintiff and Class members, according to proof;
2. For compensatory damages in the amount minimum wages due to Plaintiff and Class members, according to proof;
3. For payment of unpaid wages in accordance with California labor and employment law;
4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal period was provided late and/or missed;
5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a rest period was not afforded;
6. For compensatory damages in the amount of Plaintiff and Class Members' cell phone expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
7. For compensatory damages in the amount of Plaintiff and Class members' uniform maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
8. For an award of consequential damages in Plaintiff and Class members' favor and against Defendants, in an amount to be proven at trial;

9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
10. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
11. For prejudgment interest accrued on all due and unpaid overtime/double time and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;
12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5, according to proof;
13. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order No. 16;
14. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of Civ. Proc.* §1021.5;
15. For an award of restitution of wages to Plaintiff and Class members in an amount equal to the amount of wages owed and unpaid, according to proof;
16. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);
17. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;
18. For other injunctive relief ordering Defendants to notify Plaintiff and Class members that they have not been paid the proper amounts in accordance with California law;
19. For punitive and exemplary damages in a sum to be determined at trial; and
20. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Miguel Castro hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIPELES LAW GROUP, APC

Date: November 8, 2024

By: 
Kevin A. Lipeles
Attorneys for Plaintiff
Miguel Castro