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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By M. Schwenke ,Deputy Clerk

Attorney for Plaintiff,

Mark Frey, on behalf of himself and all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARK FREY, on behalf of himself and all others similarly situated, and on behalf of the general public,

Plaintiff,

vs.

BRIAN COX MECHANICAL, INC., a California Corporation, and DOES 1 through 10, inclusive.

Defendants.

CASE NO. 24CU020846C

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 3. FAILURE TO PAY ALL WAGES IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2);**
- 4. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e));**
- 5. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LABOR CODE §§ 201-203);**
- 6. FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b), 201.3;**
- 7. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF (LABOR CODE § 2802);**

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8. **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF (LABOR CODE § 210, 218);**

9. **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

DEMAND FOR JURY TRIAL

PLAINTIFF, Mark Frey (“Plaintiff”), on behalf of himself and other “aggrieved employees” complains of Defendants as follows:

I. INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382 on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by, Brian Cox Mechanical, Inc. and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”). Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and other California employees were further forced to keep their cell phone on during their meal and rest breaks in case of emergencies or to address the needs of Defendants’ personnel. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour’s pay for each missed meal and rest break to Plaintiff and Defendant’s California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

3. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate.

1 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for
2 all hours worked including all straight time wages, and overtime wages. These failures to pay all
3 overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

4 4. Defendant failed to issue Plaintiff and Defendant's California employees accurately
5 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California
6 employees with all wages due, as detailed above, their wage statements failed to accurately state all
7 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
8 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
9 Plaintiff and the California employees wage statements' failed to accurately state the name and
10 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
11 applicable hourly rates during the pay period and the corresponding number of hours worked, in
12 violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due.
13 Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
14 Plaintiff's worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect
15 to Plaintiff and Defendant's California employees.

16 5. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
17 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
18 226 and keep accurate records and required by §1174(d). The statements provided to Plaintiff and
19 Defendant's California employees, and the records maintained by Defendants, have not accurately
20 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
21 premiums, and total hour worked.

22 6. Our client further alleges that Defendants paid him and Defendant's California
23 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
24 were not paid all wages due and owing throughout the course of their employment as a result of
25 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
26 were not paid all final wages due and owing for the entirety of their employment. This violates
27 Labor Code §§ 201-203.

28 7. Defendant pays Plaintiff and it's California employees on a weekly basis and has
failed to comply with Labor Code § 204(a) which holds that wages earned on a weekly basis must be
paid no later than seven calendar days following the close of the payroll period. Due to the violations

described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

8. Defendants failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendants such as hand tools and power tools. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

9. Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

10. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

11. Plaintiff, on behalf of himself and all proposed Plaintiff Class members (specifically, the "California Class" as defined herein), brings this action pursuant to Labor Code §§ 226.7, 512, and 558, Labor §§ 510, 1194, 1194.2, Labor § 226(a)(e), Labor Code § 201-203, Labor Code § 204(a)(b), Labor Code § 2802, Labor Code § 210, 218, Business & Professions Code § 17200, et seq.

12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts alleged herein took place in Poway, California.

II. PARTIES

A. PLAINTIFF

13. Plaintiff Mark Frey is a resident of San Diego, California. At all times relevant herein, he was employed by Defendants in San Diego County, California. Plaintiff was employed

1 by Defendants as a non-exempt, hourly employee in California, including in and around the city of
2 Poway, County of San Diego. During Plaintiff's employment:

- 3 A. Plaintiff did not receive final wages upon termination.
- 4 B. Plaintiff and the Class were not paid in a timely manner pertaining to the waiting time
5 penalties in accordance with Labor Code §§ 201-203.
- 6 C. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in
7 violation of Labor Code § 226(a).
- 8 D. Plaintiff did not receive his compensation in accordance with Labor Code Section 204 in
9 that Defendant failed to issues wages to its employees within seven (7) calendar days
10 after the pay period ended.
- 11 E. Plaintiff was required to work without meal and rest periods, nor compensation in lieu
12 thereof, as required by the Labor Code and relevant Wage Orders.
- 13 F. Plaintiff was required to work either in excess of eight hours per workday or in excess of
14 forty hours per workweek without receiving compensation at a rate of one and one half
15 the regular rate of pay.
- 16 G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for
reasonable and necessary expenses in the course of their job duties, in violation of Labor
Code § 2802.

16 **B. DEFENDANTS**

17 14. Defendant Brian Cox Mechanical, Inc. is doing business in Poway, California. It
18 operates within the State of California. Defendants employed Plaintiff and similarly situated
19 employees within California. The violations alleged herein arose in Poway, California.

20 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
21 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
22 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
23 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
24 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
25 seek leave of court to amend this Complaint to reflect the true names and capacities of the
Defendants designated hereinafter as DOES when such identities become known.

26 16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint

1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
2 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
3 employer and/or joint employer of Plaintiff and the proposed Class.

4 **FACTUAL ALLEGATIONS**

5 17. Plaintiff and Defendant's California employees were routinely unable, and not
6 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-
7 minute meal break for every shift they worked. Specifically, Plaintiff and other California employees
8 were further forced to keep their cell phone on during their meal and rest breaks in case of
9 emergencies or to address the needs of Defendants' personnel. Because of this, Plaintiff and
10 Defendant's California employees were unable to take their required meal and rest breaks.
11 Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest
12 break to Plaintiff and Defendant's California employees who were denied timely meal and rest
13 breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

14 18. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-
15 exempt employees. As a result, employees are not properly compensated for work performance in
16 excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a
17 workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of
18 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per
19 week and do not receive overtime compensation at a rate of one and one half of their regular rate.
20 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for
21 all hours worked including all straight time wages, and overtime wages. These failures to pay all
22 overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

23 19. Defendant failed to issue Plaintiff and Defendant's California employees accurately
24 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California
25 employees with all wages due, as detailed above, their wage statements failed to accurately state all
26 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
27 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
28 Plaintiff and the California employees wage statements' failed to accurately state the name and
address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
applicable hourly rates during the pay period and the corresponding number of hours worked, in
violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due.

1 Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
2 Plaintiff's worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect
3 to Plaintiff and Defendant's California employees.

4 20. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
5 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
6 226 and keep accurate records and required by §1174(d). The statements provided to Plaintiff and
7 Defendant's California employees, and the records maintained by Defendants, have not accurately
8 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
9 premiums, and total hour worked.

10 21. Our client further alleges that Defendants paid him and Defendant's California
11 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
12 were not paid all wages due and owing throughout the course of their employment as a result of
13 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
14 were not paid all final wages due and owing for the entirety of their employment. This violates
15 Labor Code §§ 201-203.

16 22. Defendant pays Plaintiff and it's California employees on a weekly basis and has
17 failed to comply with Labor Code § 204(a) which holds that wages earned on a weekly basis must be
18 paid no later than seven calendar days following the close of the payroll period. Due to the violations
19 described above, Plaintiff and Defendant's California employees did not receive all of their wages
20 earned in a timely manner as required by Labor Code § 204(a)(b).

21 23. Defendants failed to reimburse Plaintiff and Defendant's California employees for the
22 equipment they purchased to perform work for Defendants such as hand tools and power tools.
23 Defendant further failed to reimburse its California employees for using their personal cell phones
24 for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify
25 his or her employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California
27 employees have incurred reasonable and necessary expenses in the course of their job duties, which
28 were not reimbursed by Defendant, in violation of Labor Code § 2802.

29 24. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
30 employees as a result of the unlawful employment policies and practices herein. As a result of these
31 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,

1 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
2 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
3 to pay wages as required by law.

4 25. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*
5 *Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been and
6 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

7 **CLASS ACTION ALLEGATIONS**

8 26. Plaintiff brings this action on behalf of himself and all others similarly situated as a
9 Class Action pursuant to § 382 of the Code of Civil Procedure.

10 27. Plaintiff seeks to represent a class composed of and defined as follows:

11 **THE CALIFORNIA CLASS**

12 28. All current and former California employees of Defendants since the date
13 four (4) year prior to the filing of this complaint.

14 29. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to
15 amend or modify the class description with greater specificity or further division into
16 subclasses or limitation to particular issues.

17 30. This action has been brought and may properly be maintained as a class
18 action under the provisions of § 382 of the Code of Civil Procedure because there is a
19 well-defined community of interest in the litigation and the proposed Class is easily
20 ascertainable.

21 **A. NUMEROSITY**

22 31. The potential members of the proposed Class as defined are so numerous that joinder
23 of all the members of the proposed Class is impracticable. While the precise number of proposed
24 Plaintiff Class members has not been determined at this time, Plaintiff is informed and believes that
25 Defendants currently employ, and during the relevant time periods employed, over seventy-five (75)
26 Class members in the State of California.

27 32. Accounting for employee turnover during the relevant periods necessarily increases
28 this number substantially. Plaintiff alleges that Defendants' employment records would provide
information as to the number and location of all proposed Plaintiff Class members. Joinder of all
members of the proposed Class is not practicable.

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1 **B. COMMONALITY**

2 33. There are questions of law and fact common to the proposed Class that predominate
3 over any questions affecting only individual Class members. These common questions of law and
4 fact include, without limitation, whether Defendants failed to provide members of the Class with
5 wage statements that fully and accurately itemize the requirements set forth in Labor Code §226(a),
6 accurate final wages, and final wages on the day of termination and or within seventy-two (72) hours
of separation and whether the rest periods were timely made available.

7 **C. TYPICALITY**

8 34. The claims of the named Plaintiff are typical of the claims of the proposed Class.
9 Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and
10 caused by Defendants' common course of conduct in violation of laws, regulations that have the
force and effect of law, and statutes as alleged herein.

11 **D. ADEQUACY OF REPRESENTATION**

12 35. Plaintiff will fairly and adequately represent and protect the interests of the members
13 of the proposed Class. Counsel who represents Plaintiff is competent and experienced in litigating
14 large employment class actions.

15 **E. SUPERIORITY OF CLASS ACTION**

16 36. A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy. Individual joinder of all proposed Plaintiff Class members is not
18 practicable, and questions of law and fact common to the proposed Class predominate over any
19 questions affecting only individual members of the proposed Class. Each member of the proposed
20 Class has been damaged and is entitled to recovery by reason of Defendant's failure to comply with
Labor Code 226(a).

21 37. Class action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial system.
23 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
action that would preclude its maintenance as a class action.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 512 and 558)**

38. Plaintiff incorporates paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512 and 558.

40. Plaintiff and Defendant's California employees were routinely unable, and not authorized, to take an uninterrupted 30-minute lunch break for every shift they worked. Specifically, Plaintiff and other California employees were further forced to keep their cell phone on during their meal breaks in case of emergencies or to address the needs of Defendants' personnel. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal break to Plaintiff and Defendant's California employees who were denied timely meal breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

41. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all meal period compensations, which he was owed since he commenced to work for Defendant, according to proof.

42. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and prejudgment interest.

43. Wherefore, Plaintiff seeks to represent request relief as described below.

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 512 and 558)**

44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512 and 558.

1 46. Plaintiff and Defendant's California employees were routinely unable, and not
2 authorized, to take a 10-minute rest break for every shift they worked. Specifically, Plaintiff and
3 other California employees were further forced to keep their cell phone on during their rest breaks in
4 case of emergencies or to address the needs of Defendants' personnel. Because of this, Plaintiff and
5 Defendant's California employees were unable to take their required rest breaks. Moreover,
6 Defendants failed to pay premium wages of one hour's pay for each missed rest break to Plaintiff
7 and Defendant's California employees who were denied timely rest breaks, in violation of Labor
Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

8 47. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all rest
9 period compensations, which he was owed since he commenced to work for Defendant, according to
proof.

10 48. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
11 prejudgment interest.

12 49. Wherefore, Plaintiff seeks to represent request relief as described below.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY ALL WAGES IN VIOLATION OF**
15 **(LABOR CODE §§ 510, 1194, 1194.2)**

16 50. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
forth herein.

17 51. During the liability period, Defendant failed to pay all wages to Plaintiff and
18 Defendant's California employees.

19 52. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-
20 exempt employees. As a result, employees are not properly compensated for work performance in
21 excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a
22 workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of
23 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per
24 week and do not receive overtime compensation at a rate of one and one half of their regular rate.
25 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for
26 all hours worked including all straight time wages, and overtime wages. These failures to pay all
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

53. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

54. As a result of the unlawful acts of Defendants in willfully failing to pay all alleges, Plaintiff and Defendant's California employees have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2.

FOURTH CAUSE OF ACTION

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a),(e))

55. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

56. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must accurately set forth, among other things, the total gross and net wages earned, and all hourly rates in effect, for Plaintiff. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

57. Defendant failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover, Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendant's California employees.

58. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code §

1 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
2 Defendant's California employees, and the records maintained by Defendants, have not accurately
3 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
premiums, and total hour worked.

4 59. The wage statements provided to Plaintiff and members of the Class fail to accurately
5 itemize in wage statements total gross and net wages earned, and all hourly rates in effect for
6 Plaintiff. Defendants' violations of Labor Code § 226(a) are knowing and intentional, and Plaintiff
7 has suffered injury as a result of the receipt of defective wage statements, thereby entitling them to
8 penalties pursuant to Labor Code § 226(e).

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES DUE AT THE TIME OF DISCHARGE IN VIOLATION**
11 **OF LABOR CODE §§ 201-202, RESULTING IN SECTION 203 WAGES AND**
12 **PENALTIES (WAITING TIME PENALTIES)**

13 60. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
14 fully set forth herein.

15 61. At all times material herein, the California Labor Code Sections 201, 202, and
16 203 were in effect and binding on Defendant.

17 62. California Labor Code § 202 requires employers to pay employees all wages due
18 within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent
19 part that "if an employer discharges an employee, the wages earned and unpaid at the time of
20 discharge are due and payable immediately." California Labor Code § 203 provides that if an
21 employer willfully fails to timely pay such wages the employer must, as penalty, continue to
22 pay the subject employee's wages until the back wages are paid in full or an action is
23 commenced. The penalty cannot exceed 30 days of wages.

24 63. Plaintiff was entitled to compensation for unpaid wages, but to date has not
25 received such compensation. Specifically, Defendant failed to pay Plaintiff all wages due to
26 Plaintiff at the time of his separation of employment from Defendant's. Thus, since Defendant
27 failed to promptly pay Plaintiff all wages due to Plaintiff at the time of his separation of
28 employment, Defendant violated Section 201 of the Labor Code and Plaintiff is therefore
entitled to wages and penalties pursuant to Labor Code Section 203.

64. More than 30 days have passed since Plaintiff's employment ended with

1 Defendant.

2 65. As a consequence of Defendant's willful conduct in not paying wages owed to
3 Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for
4 Defendant's failure to timely pay legal wages, together with attorney's fees and cost of suit,
5 and interest pursuant to California Labor Code Section 218.5.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF**
8 **LABOR CODE §§ 204(a)(b)**

9 66. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
10 forth herein.

11 67. At all times relevant herein, Labor Code § 204 was in full force and effect and
12 binding on Defendants.

13 68. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All
14 earned wages must be paid at least twice a month, on days designated in advance by the employer.
15 Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid
16 between the 16th and 26th day of the same month. Work performed between the 16th and the last
17 day of the month must be paid between the 1st and 10th day of the following month. (Labor Code §
18 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end
19 of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

20 69. Defendants pay Plaintiff and its California employees on a weekly basis and have
21 failed to comply with Labor Code § 204(a) which holds that wages earned on a weekly basis must be
22 paid no later than seven calendar days following the close of the payroll period. Due to the violations
23 described above, Plaintiff and Defendant's California employees did not receive all of their wages
24 earned in a timely manner as required by Labor Code § 204(a)(b).

25 70. Defendants have failed to comply with the above-section because they waited longer
26 than seven days from the close of the pay period to pay its weekly paid employees.

27 **SEVENTH CAUSE OF ACTION**

28 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF**
CALIFORNIA LABOR CODE § 2802

71. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
fully set forth herein.

1 72. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties.”

4 73. Defendants failed to reimburse Plaintiff and Defendant’s California employees
5 for the equipment they purchased to perform work for Defendants such as hand tools and power
6 tools. Defendant further failed to reimburse its California employees for using their personal cell
7 phones for the benefit of Defendant. Labor Code section 2802 provides that “[a]n employer shall
8 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
9 in direct consequence of the discharge of his or her duties.” As such, Plaintiff and Defendant’s
10 California employees have incurred reasonable and necessary expenses in the course of their job
11 duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

12 74. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
13 interest and attorneys’ fees and cost, under Labor Code § 2802.

14 75. Plaintiff also requests relief as described below.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS 17 WORKED IN VIOLATION OF (LABOR CODES §§ 210, 218)**

18 76. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
19 forth herein.

20 77. Section 2(K) or Wage Order 5 defines “hours worked” as “the rime during which an
21 employee is subject to the control of an employer, and including all the time the employee is
22 suffered or permitted to work, whether or not required to do so.” Labor Code §§ 1194 and 1197
23 required employers to compensate Plaintiff for all hours worked at least at a minimum wage ad
24 established by the Wage Order. Defendants did not pay for all hours worked and frequently required
25 Plaintiff to work off the clock. Defendants have been engaged in many unlawful employment
26 practices which resulted in underpayment for hours worked each pay period as more set forth below:

27 78. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
28 Plaintiff all wages earned twice during each calendar month pursuant to Labor Code § 204(a).
Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful employment policies
and practices herein. As a result of these practices, Plaintiff was underpaid for hours worked,
including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages

1 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
2 to pay wages as required by law.

3 NINTH CAUSE OF ACTION

4 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

5 79. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
6 forth herein.

7 80. This is an Action for Unfair Business Practices. Plaintiff Mark Frey brings this claim
8 pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as alleged
9 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff and
10 Defendant's California employees as a result of Defendant's failure to comply with the labor code
11 sections as set out above. Plaintiff and Defendant's California employees seek to enforce important
rights affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5.

12 81. Plaintiff is a "person" within the meaning of *Business & Professions Code* § 17204,
13 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
14 appropriate equitable relief.

15 82. *Business & Profession Code* § 17200 et. seq. prohibits unlawful and unfair business
16 practices.

17 83. Defendants have violated statutes and public policies. Through the conduct alleged in
18 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
19 violated specific provisions of the *Labor Code*, and have engaged in other unlawful and unfair
20 business practices in violation of *Business & Professions Code* § 17200, et seq., depriving Plaintiff,
of rights, benefits, and privileges guaranteed to Plaintiff under law.

21 84. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
22 § 17200 et. seq. of the *Business & Professions Code*.

23 85. As a proximate result of the above mentioned acts of Defendants, Plaintiff has been
24 damaged in a sum as may be proven.

25 86. Unless restrained by this Court, Defendants will continue to engage in the unlawful
26 conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should make such
27 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use
28 or employment, by Defendants, their agents, or Plaintiff, of any unlawful or deceptive practice

1 prohibited by the *Business & Professions Code*, and/or, including but not limited to, disgorgement of
2 profits which may be necessary to restore Plaintiff to the money Defendants have unlawfully failed
3 to pay.

RELIEF REQUESTED

4 WHEREFORE, Plaintiff prays for the following relief:

5 1. For a money judgment representing compensatory damages including lost
6 wages, earnings, retirement benefits and other employee benefits, and all other sums of money,
7 together with interest on these amounts, according to proof;

8 2. That Defendants are found to have violated the requirements of Labor Code § 203 for
9 failure to timely pay wages due at termination.

10 3. That Defendants are found to have violated the requirements of Labor Code § 226(e)
11 for failure to comply with itemized employee wage statement provisions.

12 4. That Defendants are found to have violated the requirements of Labor Code §
13 1174(d) for failure to comply with itemized employee wage statement provisions.

14 5. That Defendants are found to have violated the requirements of Labor Code § 1174.5
15 for failure to comply with itemized employee wage statement provisions.

16 6. That Defendants are found to have violated the requirements of Labor Code § 226.7
17 for failure to provide meal and rest periods or compensation in lieu thereof.

18 7. That Defendants are found to have violated the requirements of Labor Code § 510 for
19 failure to pay all wages.

20 8. That Defendants are found to have violated the requirements of Labor Code § 1194.2
21 for failure to pay all wages.

22 9. That Defendants are found to have violated the requirements of Labor Code § 204(b)
23 for failure to timely pay employees.

24 10. That Defendants are found to have violated the requirements of Labor Code § 2802
25 for failure to reimburse for business expenses.

26 11. That Defendants are found to have violated the requirements of Labor Code § 210 for
27 failure to pay all hours worked, including overtime hours worked.

28 12. That Defendants are found to have violated the requirements of Business and
Professions Code § 17200 et seq.;

13. An award of prejudgment and post-judgment interest;

14. An award providing for payment of costs of suit;
15. An award of attorneys' fees; and
16. Such other and further relief as this Court may deem just and proper.

Dated: November 4, 2024

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: November 4, 2024

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff