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9 individually, and on behalf of the Proposed Class

FILED
Superior Court Of California,
Sacramento
12/27/2018
iroino2
By _____, Deputy
Case Number:
34-2018-00247272

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO (UNLIMITED)

12 JOHN BOUDREAU, an individual, on behalf
13 of himself and all others similarly situated,

14 Plaintiffs,

15 vs.

16 PRIMERITUS FINANCIAL SERVICES,
17 INC., a Delaware corporation; CHRIS
18 MCGINNESS, an individual; and DOES 1
19 through 10, inclusive,

20 Defendants.

CASE NO.:

CLASS-ACTION COMPLAINT FOR

1. Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194 and 226.2;
2. Failure to Authorize and Permit Rest Periods in Violation of Labor Code § 226.7;
3. Failure to Provide Meal Periods and Pay Meal Premiums in Violation of Labor Code § 226.7;
4. Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code §§ 226 and 226.2; and
5. Violation of The Unfair Competition Law Business & Professions Code §17200, *et seq.*

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25 Plaintiff John Boudreau ("Boudreau" or "Plaintiff"), by and through his attorneys, brings this
26 action on behalf of himself and all other similarly situated non-exempt employees who are or were
27 employed in California by Defendant PRIMERITUS FINANCIAL SERVICES, INC., a Delaware
28 corporation ("Primeritus" or "Defendant"); CHRIS MCGINNESS, an individual; and DOES 1 through



COPY

1 10, inclusive (collectively, “Defendants”) within the four-year period prior to the filing of this action.
2 Plaintiff hereby alleges, on information and belief, except for information based on personal
3 knowledge, which allegations are likely to have evidentiary support after further investigation and
4 discovery, as follows:

5 **NATURE OF ACTION**

6 1. This California-based class action is brought on behalf of Plaintiff and the Class of
7 Primeritus Investigators because of Defendants’ systematic mistreatment of its employees in violation
8 of California’s wage and hour laws. Primeritus Financial Services, Inc., one of the largest
9 repossession management and skip trace services nationwide, profits off the backs of its non-exempt
10 workforce by routinely failing to pay minimum wages and mandated rest and meal break
11 compensation.

12 2. Plaintiff is informed, believes, and based thereon alleges that Defendants, jointly and
13 severally, have acted intentionally and with deliberate indifference and conscious disregard to the
14 rights of all Investigators employed by Defendants in California by failing to (1) pay minimum wages
15 in violation of Labor Code §§ 226.2 and 1194; (2) authorize and permit rest periods in violation of
16 Labor Code §§ 226.7 and IWC Wage Order 4-2001; (3) provide meal periods in violation of Labor
17 Code §§ 226.7 and 512 and IWC Wage Order 4-2001; (4) provide accurate wage statements in
18 violation of Labor Code §226; and by (5) violating of the Unfair Competition Law (“UCL”) pursuant
19 to Business & Professions Code §17200, *et seq.*

20 **JURISDICTION AND VENUE**

21 3. This class action is within the court's jurisdiction under California Labor Code §§ 226,
22 226.2, 226.7, 510, 512, 1194, IWC Wage Order 4-2001 and the California Unfair Competition law
23 (the “UCL”), Business and Professions Code § 17200, *et seq.*

24 4. Plaintiff is a citizen of California because his domicile is in California.

25 5. Defendant Chris McGinness is a citizen of California because his domicile is in
26 California.

27 6. On information and belief, Defendant Primeritus is a Delaware corporation with its
28 headquarters located in Nashville, Tennessee. Primeritus Financial Services, Inc. maintains an office
in El Dorado Hills, California where it employs over 50 employees. Primeritus Financial Services,

1 Inc.'s in-state activities are substantial, continuous and systematic and gave rise to the liabilities sued
2 upon herein. this court has jurisdiction over defendants because they conduct substantial business in
3 California and have intentionally availed themselves of the laws and markets of California through
4 the operation of their business in California. Defendant Primeritus' contacts with the state are of such
5 a character that the maintenance of an action does not offend traditional notions of fair play and
6 substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310,316 (1945).

7 7. The classes of persons whom Plaintiff seeks to represent are non-exempt employees
8 who were and/or are employed by Defendant Primeritus in California and, based on information and
9 belief, more than ninety percent of the proposed class members are citizens of California. The principal
10 injuries resulting from the alleged conduct of Defendants were and are incurring in California.
11 Plaintiffs are unaware of another class action with the same factual allegations against Defendants on
12 behalf of the same or other similarly-situated persons having been filed during the 4-year period
preceding the filing of this Complaint.

13 8. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395 and
14 395.5 because a significant portion of the conduct that gives rise to Defendants' liability, as alleged
15 herein, occurred in Sacramento County. Plaintiff was at all times a resident of Sacramento County,
16 California, and was a victim of Defendants' wrongful acts and practices complained of herein.
17 Additionally, Defendants' conduct substantial business in Sacramento County.

18 9. Plaintiff is over eighteen years of age and at all relevant times is and was a resident of
19 Sacramento County, California. Mr. Boudreau, an Investigator providing skip tracing services for
20 Defendants in the repossession process, has been a dedicated non-exempt employee of Primeritus (and
21 its predecessor entities) in its El Dorado Hills, California facilities since January 2010. Mr. Boudreau
22 has at all relevant times been paid an hourly base rate of \$8.00, plus compensation on a "piece rate"
or "per task" basis for work performed during a pay period.

23 10. During the Class Period, Defendants failed to compensate Plaintiff and the Class at the
24 minimum wage for all hours worked, including nonproductive work such as meetings, training and
25 administrative tasks.

26 11. During the Class Period, Defendants failed to provide and/or effectively precluded
27 Plaintiff Boudreau and other similarly situated Class Members from taking and/or receiving daily
28 duty-free paid rest breaks.

12. Despite having denied Plaintiff Boudreau lawfully required paid rest periods,

1 Defendants failed to compensate Mr. Boudreau and other similarly situated employees for all premium
2 wages for the non-compliant rest periods as set forth in the Labor Code.

3 11. Defendants knowingly and intentionally failed to compensate Plaintiff and the Class
4 one additional hour of pay at the employees' regular rate of compensation for each work day that a
5 compliant meal period was not provided.

6 12. Defendants knowingly and intentionally failed to provide Plaintiff Boudreau with
7 accurate, itemized wage statements, as required by Labor Code §§ 226 and 226.2. Among other
8 violations, Defendants are aware that the records provided to Mr. Boudreau failed to reflect rest break
9 periods that were not paid in compliance with California Labor Code § 226.2 and the premium wages
10 owed for such, and the records provided to Mr. Boudreau failed to reflect the correct premium wages
11 owed for non-compliant meal breaks. Because Defendants failed to accurately report Plaintiff
12 Boudreau's rest and meal period premium wages, they violated Labor Code § 226 by failing to
13 accurately report gross and net wages earned and total hours worked by Mr. Boudreau. Because of
14 the inaccurate wage statements, Mr. Boudreau has been harmed because his wages owed were not
15 properly calculated and he was not made aware of what his true wages were and how they were
16 calculated.

17 13. Because of Defendants' wage and hour violations, Plaintiff Boudreau has suffered
18 damages, and he therefore brings this class action to enforce compliance of the Labor Code and
19 recover wages, restitution, civil penalties, and attorneys' fees and costs.

20 14. Plaintiff Boudreau was, and is, a victim of Defendants' policies and/or practices
21 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to
22 him by California Labor Code §§ 226, 226.2 226.7, 512, 516, 558, and 1194; California Business and
23 Professions Code §§ 17200, *et seq.*, and Wage Order 4-2001, which sets employment standards for
24 professional, technical, clerical, mechanical and similar occupations.

25 **Defendants**

26 15. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
27 Defendant Primeritus Financial Services, Inc. is a Delaware corporation with its headquarters located
28 in Nashville, Tennessee. Primeritus Financial Services, Inc. operates an office in El Dorado Hills,

1 California. At all times mentioned herein, Plaintiff and members of the putative class were employees
2 of Primeritus Financial Services, Inc. working as Investigators in the repossession process.

3 16. Plaintiff is informed, believes and thereon alleges that, at all times pertinent hereto,
4 Defendant Chris McGinness was the Vice President and General Manager of Operations at the
5 Primeritus location in El Dorado Hills, California where Plaintiff and those similarly situated were
6 employed. Plaintiff is further informed, believes and thereon alleges that, at all times pertinent hereto,
7 Chris McGinness was a citizen of the forum state of California.

8 17. Plaintiff is informed, believes and thereon alleges that, at all times pertinent
9 hereto, Defendants Primeritus, Chris McGinness, and Does 1 through 10, were the owner(s),
10 director(s), officer(s), or managing agent(s) acting on behalf of employer, Primeritus, and who, in said
11 respective capacities and positions, are liable for the claims alleged herein pursuant to Labor Code §
12 558.1 in that they were and are an “other person” acting on behalf of U.S. HealthWorks, who violated,
13 or caused to be violated, certain Labor Code sections stated herein.

14 18. Based on information and belief, Defendants had the authority to, directly or indirectly,
15 or through an agent or other person, employ or exercise control over Plaintiff’s and the Classes’ wages,
16 hours, and working conditions.

17 19. Based on information and belief, Defendants had knowledge of the wage-and-hour
18 violations alleged herein and each Defendant had the power to prevent the violations from occurring.
19 Having knowledge of the wage-and-hour violations set forth in this Complaint, Defendants could have
20 but failed to prevent the violations from occurring.

21 29. At all relevant times, Defendants did, and still do, transact and conduct business in the
22 State of California, including, but not limited to, the County of Sacramento and with the jurisdiction
23 of this Court.

24 30. At all times mentioned in the causes of action alleged herein, each Defendant was an
25 agent and/or employee of each other Defendant. In doing the things alleged in the causes of action
26 stated herein, each Defendant was acting within the course and scope of this agency or employment
27 and was acting with the consent, permission, and authorization of each of the remaining Defendants.
28

1 All actions of each defendant, as alleged in the causes of action stated herein, were ratified and
2 approved by every other defendant or its officers or managing agents.

3 31. Plaintiff does not know the true names and capacities of Defendants DOES 1 through
4 10, inclusive, and therefore sues them by these fictitious names. Plaintiff will amend this Complaint to
5 include their names and capacities once they are known. Plaintiff is informed and believes, and on that
6 basis alleges, that each of the Defendants designated as a DOE is legally responsible in some manner
7 for the occurrences alleged in this Complaint, and unlawfully caused the injuries and damages to
8 Plaintiff and the Class as alleged in this Complaint.

9 **PRIMERITUS' UNLAWFUL CONDUCT**

10 **Background**

11 32. Primeritus is a national provider of repossession management and skip tracing
12 services. Primeritus operates a facility in El Dorado Hills, California, and employs in excess of 50
13 members of the Class at its California facility.

14 33. The non-exempt hourly employee positions that constitute the Class include
15 Investigators who perform skip searches in the repossession process. As described in more
16 particularity in paragraphs 51 through 53 below, the Class includes all hourly California Employees,
17 meaning all non-exempt current and former employees of Primeritus who were employed as
18 Investigators by Primeritus in California during the Class Period.

19 **Failure to Pay Minimum Wages**

20 34. Wage Order No. 4-2001, commonly known as Wage Order No. 4, provides that "Every
21 employer shall pay to each employee, on the established payday for the period, not less than the
22 applicable minimum wage for all hours worked in the payroll period, whether the remuneration is
23 measured by time, piece, commission, or otherwise." (Cal. Code Regs., tit. 8, § 11040, subd. (4)(B).
24 "Hours worked" is defined in subdivision 2(K) of the wage order as "the time during which an
25 employee is subject to the control of an employer, and includes all the time the employee is suffered
26 or permitted to work, whether or not required to do so." (Cal. Code Regs., tit. 8, § 11040, subd. (2)(K).
27 Thus, the obligation to pay minimum wages attaches to each and every separate hour worked during
28 the payroll period.

1 *Container Corp. of Cal.*, (2018) 4 Cal.5th 542, 554, 562.

2 41. During the Class Period, Defendants failed to provide Plaintiff and the Class Members
3 the additional hour of pay at their regular rate of pay as required under Labor Code §§ 226.7 and 512.

4 **Meal Break Premium Violations**

5 42. Section 512 of the Labor Code requires that an employer may not employ and
6 employee for a work period of more than five hours per day without providing the employee with a
7 meal period of not less than 30 minutes and for a work period of more than 10 hours with a second
8 meal period of not less than 30 minutes.

9 43. Section 226.7 of the Labor Code mandates that if an employer fails to provide an
10 employee with a compliant meal period, it shall pay the employee one additional hour of pay at the
11 employee's regular rate of compensation for each workday that the meal period is not provided.

12 44. Section 226.7's "regular rate" of compensation is not limited to Plaintiff's and the
13 Class Members' base rate of compensation, but includes other forms of qualifying compensation, such
14 as their piece-rate pay. *Alvarado v. Dart Container Corp. of Cal.*, (2018) 4 Cal.5th 542, 554, 562.

15 45. During the Class Period, Defendants failed to compensate Plaintiff and the Class for
16 premium wages owed for non-compliant meal breaks as set forth in Labor Code § 226.7. Specifically,
17 Defendants failed to pay Plaintiff and the Class one additional hour of pay at the employees' "regular
18 rate" of compensation for each workday a compliant meal break was not provided.

19 **Wage Statement Violations**

20 46. Defendants knowingly and intentionally failed to provide Plaintiff and the Class with
21 accurate, itemized wage statements, as required by Labor Code § 226 and 226.2. Because Defendants
22 failed to accurately report Plaintiff's and the Class's correct compensation for non-productive time and
23 rest and meal period premium wages, they violated Labor Code § 226, by failing to accurately report
24 gross and net wages earned and total hours worked by Plaintiffs and the Class. Because of the
25 inaccurate wage statements, Plaintiffs and the Class have been harmed because their wages owed were
26 not properly calculated and they were never made aware of what their true wages were and how they
27 were calculated.

28

1 (b) Rest Period Sub-Class: Those members of the Class who, associated with
2 their employment with Defendants, worked at least 4 hours a day or major fraction thereof and/or
3 those members of the putative Class who worked in excess of 6 hours a day;

4 (c) Meal Period Sub-Class: Those members of the Class who, associated with
5 their employment with Defendants, worked a period of more than five hours and did not voluntarily
6 waive their right to meal periods;

7 (d) Wage-Statement Sub-Class: Those members of the Class to whom
8 Defendants provided a wage statement at any time during the period of one year prior to the filing of
9 the action, up to and including the present;

10 54. Plaintiff reserves the right pursuant to state law, to amend or modify the respective
11 definitions of the Class and/or Sub-Classes to provide greater specificity and/or further division into
12 subclasses or limitation to particular issues.

13 55. Plaintiff is informed, believes, and thereon alleges that the number of members of the
14 Class is in excess of fifty (50). Consequently, the Class is so numerous that joinder of all members
15 individually would be impractical.

16 56. Plaintiff is a member of the Non-Exempt employees comprising the Class and was
17 employed with Defendants at the Primeritus California facility during the Class Period.

18 57. Plaintiff has no conflicts of interest with is fellow members of the Class and have been
19 able, and will continue to be able, to fairly and adequately protect the interests of all members of the
20 putative Class.

21 58. Plaintiff is informed, believes and thereon alleges that Defendants' unlawful
22 employment policies and practices, raise questions of fact common to the members of the Class,
23 including, whether Defendants:

24 (a) Failed to pay Plaintiff and members of the Class all of their earned wages and
25 compensation, including applicable minimum wages;

26 (b) Failed to provide Plaintiff and members of the Class compliant rest breaks
27 pursuant to the applicable laws;

28

1 (c) Failed to pay Plaintiff and members of the Class one hour of pay at their regular
2 rate of compensation for each non-compliant rest period;

3 (d) Failed to separately compensate Plaintiff and members of the Class for rest
4 periods and other nonproductive time at a regular hourly rate that is no less than the higher of (i) an
5 average hourly rate determined by dividing the total compensation for the workweek, exclusive of
6 compensation for rest and recover periods and any premium compensation for overtime, by the total
7 hours worked during the workweek, exclusive of rest and recovery periods; (ii) the applicable
8 minimum wage.

9 (e) Failed to provide Plaintiff and members of the Class compliant meal periods in
10 accordance with the applicable laws;

11 (e) Failed to pay Plaintiff and members of the Class one hour of pay at their regular
12 rate of compensation for each meal break which is not provided;

13 (f) Failed to furnish to Plaintiff and members of the Class accurate, itemized wage
14 statements compliant with Labor Code §§ 226 and 226.2;

15 59. Plaintiff is informed, believes and thereon alleges that Defendants' unlawful
16 employment policies and practices raise numerous questions of law common to the members of the
17 Class, including, without limitation:

18 (a) Defendants' legal obligation to pay all members of the Class for rest and
19 recovery periods and other non-productive time separate from any piece-rate compensation pursuant
20 to Labor Code section 226.2;

21 (b) Defendants' legal obligation to provide members of the Class with compliant
22 paid rest periods pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001;

23 (c) Defendants' legal obligation to compensate members of the Class one
24 additional hour of pay at the employee's regular rate of compensation for each workday that a
25 compliant rest break is not provided pursuant to Labor Code § 226.7;

26 (d) Defendants' legal obligation to provide compliant meal periods under Labor
27 Code § 512 and IWC Wage Order 4-2001;

28

1 (e) Defendants' legal obligation to compensate members of the Class one
2 additional hour of pay at the employee's regular rate of compensation for each workday that a
3 compliant meal break is not provided pursuant to Labor Code § 226.7;

4 (f) Whether Defendants' wage statements were compliant with Labor Code § 226
5 and § 226.2 as to Plaintiff and members of the Class;

6 (g) What remedies, including restitution, compensatory damages, statutory and
7 civil penalties, additional wages and disgorgement of revenue, are available under California law to
8 members of the Class who were not paid all earned wages, compensation and benefits; were not timely
9 paid all earned minimum, regular and overtime wages, compensation and benefits; and were not
10 properly compensated for meal and rest periods.

11 (h) The Class members' entitlement to be compensated for rest and recovery
12 periods and other nonproductive time at a regular hourly rate that is no less than the higher of: (i) An
13 average hourly rate determined by dividing the total compensation for the workweek, exclusive of
14 compensation for rest and recovery periods and any premium compensation for overtime, by the total
15 hours worked during the workweek, exclusive of rest and recovery periods; (ii) The applicable
16 minimum wage.

17 (i) The Class members' entitlement to one hour of pay at the members' regular
18 rate of compensation for each meal period that Defendants did not permit the Class members to take;

19 (j) The requirements for a wage statement to be compliant with Labor Code §226.2
20 and § 226;

21 Plaintiff is informed, believes and thereon alleges that his claims are typical of the
22 claims of the members of the Class because they encompass the same unlawful policies and practices
23 of Defendants; they arise out of the same alleged course of conduct by Defendants; are based upon
24 the same legal theories as the claims of the Class; and the legal issues raised under the California state
25 laws as a result of Defendants' conduct apply equally to Plaintiffs and members of the Class.

26 60. Plaintiff is informed, believes and thereon alleges that all members of the Class are
27 similarly situated in that, throughout their employment, they were subject to Defendants' violations
28

1 of California labor law, including that Defendants maintained uniform policies and practices whereby
2 Defendants regularly and systematically:

3 (a) Failed to pay Plaintiff and members of the Class minimum wages and
4 compensation;

5 (b) Failed to authorize and permit Plaintiff and Class Members to take compliant
6 rest periods;

7 (c) Failed to pay Plaintiff and members of the Class one hour of pay at their regular
8 rate of compensation for each workday a rest period was not provided;

9 (d) Failed to provide Plaintiff and members of the Class compliant meal periods;

10 (e) Failed to pay Plaintiff and members of the Class one hour of pay at their regular
11 rate of compensation for each workday that a meal period was not provided;

12 (f) Failed to furnish to Plaintiff and members of the Class Labor Code §226 and §
13 226.2 compliant wage statements.

14 61. Such uniform policies and practices have affected each member of the Class, including
15 Plaintiff, in a similar fashion.

16 62. Plaintiff is informed, believes and thereon alleges that the prosecution of separate
17 actions by or against individual members of the Class would create a risk of substantial prejudice
18 because separate actions could result in the imposition of incompatible standards of conduct on the
19 party opposing class certification through inconsistent judgments or varying adjudications.

20 63. The questions of law and fact common to the members of the Class predominate over
21 any questions affecting only individual members, and a class action is superior to other available
22 methods for the fair and efficient adjudication of the controversy in that members of the Class have
23 little or no interest in individually controlling the prosecution of separate actions. The putative Class
24 member's individual claims are of a magnitude which make pursuit thereof, on an individual basis,
25 economically unfeasible and dissuade prosecution of such meritorious claims as the economic benefit
26 is far outweighed by the justified concern for retaliatory conduct on the part of Defendants and/or
27 concern for impaired future job prospects as a result of the perceived stigma associated with having
28 advanced litigation against one's previous employer.

1 of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged.

2 **Adequacy of Representation**

3 74. Plaintiff will fairly and adequately represent and protect the interests of the Class.
4 Counsel who represents Plaintiff is competent and experienced in litigating large employment class
5 actions.

6 **Superiority of Class Action**

7 75. A class action is superior to other available means for the fair and efficient adjudication
8 of this controversy. Individual joinder of the Class is not practicable, and questions of law and fact
9 common to the Class predominate over any questions affecting only individual members of the Class.
10 Each member of the Class has been damaged and is entitled to recovery because of Defendants'
11 uniform unlawful policy and/or practices described herein. There are no individualized factual or legal
12 issues for the court to resolve that would prevent this case from proceeding as a class action. Class
13 action treatment will allow those similarly situated persons to litigate their claims in the manner that is
14 most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any
15 difficulties that are likely to be encountered in the management of this action that would preclude its
16 maintenance as a class action.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay Minimum Wages In Violation of**

19 **California Labor Code §§ 226.2 and 1194**

20 **(Against all Defendants on Behalf of Plaintiff and the Class)**

21 76. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

22 77. At all relevant times, Plaintiff and members of the Minimum-Wage Sub-Class were
23 employees of Defendants covered by Labor Code §§ 226.2, 1194, 1194.2 and IWC Wage Order 4-
24 2001.

25 78. As set forth above, during the Class Period, Plaintiff and the Minimum Wage Sub-
26 Class Members were paid on a base rate and piece-rate basis, but Defendants did not separately
27 compensate the Investigators for their time spent on nonproductive work at a regular hourly rate that
28 is no less than the applicable minimum wage.

1 79. Accordingly, during the Class Period, Plaintiff and Minimum Wage Sub-Class
2 Members did not receive the requisite compensation under Labor Code § 226.2 and § 1194 for their
3 time spent engaging in nonproductive tasks such as attending mandatory meetings, training and
4 administrative tasks.

5 80. In failing to separately pay Plaintiff and Minimum Wage Sub-Class Members at no
6 less than the minimum wage for their time spent on nonproductive tasks, particularly after *Bluford v.*
7 *Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, *Gonzales v. Downtown LA Motors, LP* (2013) 215
8 Cal.App.4th 36, and the enactment of Labor Code § 226.2 consistent with those holdings, Defendants
9 have operated in bad faith, given the state of the law. Accordingly, pursuant to § 1194 and 1194.2 of
10 the California Labor Code, Plaintiff and the Minimum Wage Sub-Class Members are entitled to
11 recover their unpaid hourly wages due, or minimum wage plus liquidated damages, in an additional
12 amount equal to the total amount of wages unlawfully withheld during the Class Period for the
13 Investigators' non-productive work.

14 81. Pursuant to § 1194.2 of the Labor Code, Plaintiff and the Class Members are also
15 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Authorize and Permit Rest Periods in Violation of Labor Code § 226.7**

18 **(Against All Defendants on Behalf of Plaintiff and the Class)**

19 82. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
20 and subsequent paragraphs.

21 83. At all relevant times, Plaintiff and the Rest-Period Sub-Class Members were
22 employees of Defendants, covered by Labor Code §§ 226.7 and IWC Wage Order 4-2001.

23 84. Labor Code § 226.7(b) provides that an employer shall not require an employee to
24 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
25 regulation, standard, or order of the Industrial Welfare Commission . . .

26 85. Subdivision 12(A) of the IWC Wage Order 4-2001 provides in pertinent part that:
27 Every employer shall authorize and permit all employees to take rest periods, which
28 insofar as practicable shall be in the middle of each work period. The authorized rest

1 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
2 net rest time per four (4) hours or major fraction thereof. However, a rest period need
3 not be authorized for employees whose total daily work time is less than three and one-
4 half (3½) hours. Authorized rest period time shall be counted as hours worked for which
5 there shall be no deduction from wages.

6 8 Cal Code Reg § 11040 (12)(A).

7 86. At all relevant times herein, Defendants failed to authorize and permit Plaintiff
8 and Class Members to take compliant paid rest periods.

9 87. Labor Code § 226.7(c) provides that:

10 If an employer fails to provide an employee a meal or rest or recovery period in
11 accordance with a state law, including, but not limited to, an applicable statute or
12 applicable regulation, standard, or order of the Industrial Welfare Commission . . . the
13 employer shall pay the employee one additional hour of pay at the employee's regular
14 rate of compensation for each workday that the meal or rest or recovery period is not
15 provided.

16 88. Similarly, Subdivision 12(B) of IWC Wage Order 4-2001 provides that:

17 If an employer fails to provide a rest period in accordance with the applicable provisions
18 of this order, the employer shall pay the employee one (1) hour of pay at the employee's
19 regular rate of compensation for each workday that the rest period is not provided.

20 8 Cal Code Reg § 11040 (12)(B).

21 89. Section 226.7's "regular rate" of compensation is not limited to Plaintiff's and the
22 Rest Period Sub-Class Members' base rate of compensation, but includes other forms of qualifying
23 compensation, such as their piece-rate pay. *Alvarado v. Dart Container Corp. of Cal.*, (2018) 4 Cal.5th
24 542, 554, 562.

25 90. Defendants violated Labor Code § 226.7 and IWC Wage Order 4-2001 by failing to
26 compensate Plaintiff and the Rest Period Sub-Class Members with one hour of pay at their regular rate
27 of compensation for each work day that the rest period was not provided.

28 91. As a result of Defendants' unlawful conduct, Plaintiff and the Rest Period Sub-Class

1 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
2 additional pay owed for unprovided rest periods at the lawful rate of pay.

3 92. Pursuant to Labor Code § 218, Plaintiff and the Rest Period Sub-Class Members are
4 entitled to recover the full amount of their unpaid additional wages for non-compliant rest periods.
5 Pursuant to Labor Code § 218.5, Plaintiff and the Rest Period Sub-Class Members are entitled to
6 recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 and/or Civil
7 Code § 3287(a), Plaintiff and the Rest Period Sub-Class Members are entitled to recover prejudgment
8 interest on the additional wages owed for denied meal periods at the lawful rate of pay.

9 **THIRD CAUSE OF ACTION**

10 **Failure to Provide Meal Periods and**

11 **Pay Meal Premiums in Violation of Labor Code § 226.7**

12 **(Against All Defendants on Behalf of Plaintiff and the Class)**

13 93. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
14 and subsequent paragraphs.

15 94. At all relevant times, Plaintiff and Meal-Period Sub-Class Members were employees
16 of Defendants, covered by Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

17 95. Pursuant to Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, Plaintiff and
18 the Meal Period Sub-Class Members were entitled to a meal period of at least thirty (30) minutes for
19 each workday that they worked more than five (5) hours, and a second meal period of at least thirty
20 (30) minutes for each workday they worked more than ten (10) hours.

21 96. Defendants failed to provide Plaintiff and the Meal Period Sub-Class Members meal
22 periods in accordance with Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001. As a result,
23 in accordance with Defendants' corporate policy and practice, Plaintiff and the Meal Period Sub-Class
24 Members therefore forfeited meal periods without receiving premium pay under California law.

25 97. Labor Code § 226.7(c) provides that if an employer fails to provide an employee a meal
26 or rest or recovery period in accordance with a state law, including, but not limited to, an applicable
27 statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the employer
28 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
each workday that the meal or rest or recovery period is not provided.

1 98. Similarly, IWC Wage Order 4-2001 (11)(B) provides that

2 If an employer fails to provide an employee a meal period in accordance with the
3 applicable provisions of this order, the employer shall pay the employee one (1) hour of
4 pay at the employee's regular rate of compensation for each workday that the meal period
5 is not provided.

6
7 8 Cal. Code Regs §11040 (11)(B).

8 99. Section 226.7's "regular rate" of compensation is not limited to Plaintiff's and the Meal
9 Period Sub-Class Members' base rate of compensation, but includes other forms of qualifying
10 compensation, such as their piece-rate pay. *Alvarado v. Dart Container Corp. of Cal.*, (2018) 4 Cal.5th
11 542, 554, 562.

12 100. Defendants violated Labor Code §226.7 and IWC Wage Order 4-2001 by failing to
13 compensate Plaintiff and the Meal Period Sub-Class Members for meal periods at the rate of one hour
14 of pay at their regular rate of compensation for each work day that the meal periods were not provided.

15 101. Plaintiff and the Meal Period Sub-Class Members did not voluntarily or willfully waive
16 their meal periods.

17 102. As a result of Defendants' unlawful conduct, Plaintiff and the Meal Period Sub-Class
18 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
19 additional premium wages at the lawful rate of pay for days when all required meal periods were not
20 provided.

21 103. Pursuant to Labor Code § 218, Plaintiff and the Meal Period Sub-Class Members are
22 entitled to recover the full amount of their unpaid additional wages for missed meal periods. Pursuant
23 to Labor Code § 218.5, Plaintiff and the Meal Period Sub-Class Members are entitled to recover their
24 reasonable attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 and/or Civil Code §
3287(a), Plaintiff and the Meal Period Sub-Class Members are entitled to recover prejudgment interest
25 on the additional wages owed for denied meal periods at the lawful rate of pay.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 **in Violation of Labor Code §§ 226 and 226.2**

4 **(Against All Defendants on Behalf of Plaintiff and the Class)**

5 104. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

6 105. At all relevant times, Plaintiff and the Wage Statement Sub-Class Members were
7 employees of Defendants covered by Labor Code § 226 and 226.2.

8 106. Pursuant to Labor Code §§ 226(a) and 226.2, Plaintiff and the Wage Statement Sub-
9 Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an
10 accurate, compliant, itemized statement showing gross wages earned; net wages earned; all applicable
11 hourly rates in effect during the pay period; the corresponding number of hours worked at each hourly
12 rate by the employee; and detailed information separately itemizing the hours, rates of compensation,
and total wages for rest breaks and other non-productive time.

13 107. Defendants failed to provide Plaintiff and the Wage Statement Sub-Class Members
14 accurate, compliant, itemized wage statements in accordance with Labor Code §§ 226(a) and 226.2.
15 Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year
16 preceding the filing of the Complaint in this action (the "Penalty Period"), Defendants maintained and
17 continue to maintain a policy or practice of failing to pay wages for time spent during rest periods
18 separate from their piece-rate compensation, failing to pay wages for non-productive time (including
19 but not limited to time spend on trainings, meetings and administrative tasks), failing to accurately
20 record all hours actually worked, failing to pay meal break premium payments, failing to pay rest
21 period premium payments to piece-rate Investigators in California, and failing to itemize the
22 applicable rates of compensation and hours. Defendants' practice resulted and continues to result in
23 the issuance of 'wage statements' to Class Members that do not show the correct amount of gross
24 wages earned, the correct amount of net wages earned, the correct number of hours worked, the correct
25 hourly rates of pay in effect for each hour worked, and the correct deductions made thereto for taxing
26 authority purposes, and also fail to comply with the requirements of Labor Code § 226.2(a)(2), in
27 terms of detailing the hours, rates of compensation, and total wages for rest breaks and other non-
28 productive time.

108. Defendants' failure to provide Plaintiff and the Wage Statement Sub-Class Members
with accurate, compliant, itemized wage statements was knowing and intentional. Defendants had the

1 ability to provide Plaintiff and Wage Statement Sub-Class Members with accurate wage statements,
2 but intentionally provided 'wage statements' that Defendants knew were not accurate or compliant.

3 109. As a result of Defendants' conduct, Plaintiff and the Wage Statement Sub-Class
4 Members have suffered injury. The absence of accurate and complete information on their wage
5 statements has prevented timely challenges to Defendants' unlawful pay practices, required discovery
6 and mathematical computations to determine the amount of wages owed and number of hours actually
7 worked, caused difficulty and expense in attempting to reconstruct time and pay records, and led to
8 the submission of inaccurate information about wages and deductions to state and federal government
9 agencies.

10 110. Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Sub-Class
11 Members are each entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty
12 Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each
13 violation of Labor Code § 226 in a subsequent pay period during the Penalty Period, not to exceed an
14 aggregate penalty of four thousand dollars (\$4,000) per employee.

15 111. Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Sub-Class
16 Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with
17 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide currently
18 employed Wage Statement Sub-Class Members with inaccurate, deficient, non-compliant 'wage
19 statements' in violation of Labor Code §§ 226(a) and 226.2 and currently employed Wage Statement
20 Sub-Class Members have no adequate legal remedy for the continuing injuries that will be suffered as
21 a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for
22 ensuring Defendants' compliance with Labor Code §§ 226(a) and 226.2.

23 112. Pursuant to Labor Code §§ 226(e) and 226(h), Plaintiff and the Wage Statement Sub-
24 Class Members are entitled to recover the full amount of penalties due under Labor Code § 226(e),
25 reasonable attorney's fees and costs of suit.

26 **FIFTH CAUSE OF ACTION**

27 **Violation of The Unfair Competition Law Business & Professions Code §17200, *et seq.***

28 **(Against All Defendants Except Defendant Chris McGinness**

on Behalf of Plaintiff and the Class)

113. Plaintiff realleges and incorporates herein by reference each allegation in the preceding
and subsequent paragraphs.

1 114. Defendants engaged in unlawful activity prohibited by Bus. & Prof. Code §17200, *et*
2 *seq.* The actions of Defendants as alleged within this Complaint constitute unlawful and unfair business
3 practices with the meaning of Bus. & Prof. Code §§17200, *et seq.*

4 115. Defendants have conducted the following unlawful activities:

5 (a) violations of Labor Code §§ 226.2 and 1194, and IWC Wage Order, 4-2001,
6 by failing to compensate Plaintiff and the Class for rest, recovery and non-productive work at not less
7 than the applicable minimum wage rates;

8 (b) violations of Labor Code § 226.7 and Wage Order 4-2001 by failing authorize
9 and permit rest periods to Plaintiff and Class Members and by failing to provide one hour of pay at
10 Plaintiff's and the Classes' regular rates of compensation for each work day that compliant rest periods
11 were not provided;

12 (c) violations of Labor Code § 226, by failing to provide Plaintiff and the Class
13 with accurate payroll records;

14 (d) violations of Labor Code §§ 226.7 and 512 and Wage Order 4-2001 by failing
15 to provide Plaintiff and the Class with compliant meal periods and by failing to provide one hour of
16 pay at Plaintiff's and the Classes' regular rates of compensation for each work day that compliant meal
17 periods were not provided;

18 (e) violations of Labor Code § 558 for failing to timely pay Plaintiffs and the Class
19 all wages due and for violating the Labor Code section concerning working hours.

20 116. Defendants' activities also constitute unfair practices in violation of Bus. & Prof. Code
21 §§ 17200, *et seq.*, because Defendants' practices violate the above noted laws, and/or violate an
22 established public policy, and/or the practice is immoral, unethical, oppressive, unscrupulous, and
23 substantially injurious to Plaintiff and the Class.

24 117. The identified violations of the Labor Code, Wage Order, Regulations, laws, and
25 public policy constitute business practices because they were done repeatedly over time and in a
26 systematic manner to the detriment of Plaintiff and the Class.

27 118. Because of Defendants' violations of the Labor Code, Wage Order, Regulations, laws,
28 and public policy, Plaintiff and the Class have suffered injury-in-fact and have lost money or property

1 because of Defendants' practices. This injury-in-fact and loss of money or property consists of the lost
2 wages and other restitutionary remedies provided by the Labor Code, Regulations, Wage Order, laws
3 and public policy as detailed in this Complaint and other resulting harms. Plaintiff and the Class are
4 entitled to restitution, an injunction, declaratory, and other equitable relief against such unlawful
5 practices to prevent future damage for which there is no adequate remedy at law.

6 119. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff
7 and the Class are entitled to equitable and injunctive relief, including full restitution of all wages which
8 have been unlawfully lost as a result of the business acts and practices described herein and enjoining
9 Defendants to cease and desist from engaging in the practices described herein for the maximum time
10 permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

11 120. The unlawful and unfair conduct alleged herein is continuing. Plaintiff believes and
12 alleges that if Defendants are not enjoined from the conduct set forth in this Complaint, it will continue
13 to violate the noted laws.

14 121. Plaintiff and the Class are also entitled to and hereby claim attorneys' fees and costs,
15 pursuant to the private attorney general theory doctrine (Code of Civil Procedure §1021.5), and any
16 other applicable provision for attorney fees and costs, based upon the violation of the underlying public
17 policies.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, individually and on behalf of the putative Class prays for judgment
20 as follows:

21 A. That the Court determine that this action may be maintained as a class action with the
22 named Plaintiff appointed as Class representative;

23 B. For the attorneys appearing on the above caption to be named Class counsel;

24 C. For nominal, actual, exemplary, and compensatory damages, including lost wages,
25 according to proof at trial;

26 D. For restitution of all monies, wages, expenses, and costs due to Plaintiff and the Class;

27 E. For disgorged profits from the unlawful and unfair business practices in violation of
28 Bus. & Prof. Code §17200, *et seq.*;

1 F. For reasonable attorneys' fees, costs and expenses pursuant to Labor Code §§ 218.5,
2 226, 1194 and Code of Civil Procedure §1021.5;

3 G. For pre-judgment and post-judgment interest to the extent allowable by law;

4 H. For all applicable penalties, whether civil or statutory, recoverable under Labor Code
5 §§ 226, 558, and as otherwise authorized by statute or law.

6 I. For an injunction restraining Defendants from continuing to engage in unlawful and
7 unfair business practices in violation of Bus. & Prof. Code §17200, *et seq.*;

8 J. For any other appropriate declaratory relief; and


9 K. For all such other and further relief that the Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, individually, and on behalf of the Class-Agrieved Employees, hereby demand a jury
12 trial.

13
14 Date: December 26, 2018

15
16 **HATHAWAY, PERRETT, WEBSTER,
17 POWERS, CHRISMAN & GUTIERREZ, APC**

18 By: 
19 ALEJANDRO P. GUTIERREZ
20 Attorneys of Record for Plaintiff