

FILED BY FAX

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OCT 23 2020
By: K. Spichka
Deputy Clerk

9 Attorneys for Plaintiffs CARLOS HERCULES and ERIC AGUILAR,
10 on behalf of themselves and similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 CARLOS HERCULES and ERIC)
14 AGUILAR, as individuals, and on behalf of)
15 all others similarly situated,)

16 Plaintiffs,)

17 vs.)

18 MAXIMUS SERVICES, LLC, an unknown)
19 Limited Liability Company;)
20 MAXIMUS HEALTH SERVICES, INC.,)
21 an Indiana Corporation;)
22 MAXIMUS, INC., an unknown association;)
23 ILENE R. BAYLINSON, an individual;)
24 DAVID R. FRANCIS, and individual;)
25 KEVIN M. REILLY, an individual; and)
26 DOES 1 to 100, inclusive,)

27 Defendants.)

Case No. 34-2019-00268385

CLASS ACTION

**THIRD AMENDED COMPLAINT
FOR DAMAGES**

- 1. Failure to Pay Overtime Wages
- 2. Failure to Pay Minimum Wages
- 3. Failure to Provide Meal Periods
- 4. Failure to Provide Rest Periods
- 5. Failure to Provide Accurate Wage Statements
- 6. Waiting Time Penalties
- 7. Unfair Competition
- 8. Private Attorneys General Act

JURY TRIAL DEMANDED

1 Plaintiffs CARLOS HERCULES and ERIC AGUILAR (“Plaintiffs”), on behalf of
2 themselves and all other similarly situated employees, hereby file this Third Amended Complaint
3 against Defendants MAXIMUS SERVICES, LLC, an unknown Limited Liability Company;
4 MAXIMUS HEALTH SERVICES, INC., an Indiana Corporation; MAXIMUS, INC., an unknown
5 association; ILENE R. BAYLINSON, an individual; DAVID R. FRANCIS, and individual; KEVIN
6 M. REILLY, an individual; and DOES 1 to 100, inclusive (hereinafter collectively referred to as
7 “Defendants”). Plaintiffs are informed and believe, and on the basis of that information and belief,
8 allege as follows:

9 INTRODUCTION

10 1. This is a class action brought by Plaintiffs for overtime wages, regular wages, meal and
11 rest period violations, wage statement violations, waiting time penalties, and unfair competition under
12 the California Labor Code and Industrial Welfare Commission’s Wage Orders. Plaintiffs have also
13 alleged a representative Private Attorney’s General Act claim.

14 JURISDICTION AND VENUE

15 2. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
16 violations of the California Labor Code, California Business and Professions Code, and Industrial
17 Welfare Commission Wage Order (“Wage Order”) No. 4-2001.

18 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
19 Defendants have their principal places of business in Sacramento County and/or are foreign corporations
20 and have not designated any county in California as being where they maintain their principal offices.
21 In addition, some of the wrongful acts and violations of law asserted herein occurred within Sacramento
22 County, and Defendants’ obligation to pay wages arose in Sacramento County pursuant to *Madera*
23 *Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

24 4. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
25 claims set forth in this Complaint against Defendants as Private Attorney Generals on behalf of
26 themselves and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
27 Plaintiffs gave written notice via online submission to the Labor and Workforce Development Agency
28 (“LWDA”) on approximately August 30, 2019. Plaintiffs provided facts and legal bases for their claims

1 within the notices to the LWDA on all violations asserted under the Private Attorneys General Act cause
2 of action. Plaintiff also submitted the \$75.00 filing fee. The August 30, 2019 notice was also sent via
3 certified mail to Defendants. Plaintiffs are informed and believe that, to date, the LWDA has not
4 provided any response to Plaintiffs' notice correspondence. Accordingly, Plaintiffs are informed and
5 believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General
6 Act ("PAGA") and may bring this action on behalf of themselves and all similarly situated employees.
7 See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.App.4th 365,
8 383 n.18, 385 n.19 (2005).

9 **PARTIES**

10 5. Plaintiff CARLOS HERCULES is an individual over the age of eighteen (18) and is a
11 resident of the State of California.

12 6. Plaintiff ERIC AGUILAR is an individual over the age of eighteen (18) and is a
13 resident of the State of California.

14 7. Plaintiffs are informed and believe, and thereupon allege, MAXIMUS SERVICES,
15 LLC, is now and/or at all times mentioned in this Complaint was an unknown Limited Liability
16 Company and the owner and operator of an industry, business and/or facility doing business in the
17 State of California.

18 8. Plaintiffs are informed and believe, and thereupon allege, MAXIMUS HEALTH
19 SERVICES, INC., is now and/or at all times mentioned in this Complaint was an Indiana
20 Corporation and the owner and operator of an industry, business and/or facility licensed to do
21 business and actually doing business in the State of California.

22 9. Plaintiffs are informed and believe, and thereupon allege, MAXIMUS, INC., is now
23 and/or at all times mentioned in this Complaint was an unknown association and the owner and
24 operator of an industry, business and/or facility doing business in the State of California.

25 10. Plaintiffs are informed and believe, and thereupon allege, that ILENE R.
26 BAYLINSON is an individual over the age of eighteen (18) and is now and/or at all times mentioned
27 in this Complaint was a resident of the State of Virginia.

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1 11. Plaintiffs are informed and believe, and thereupon allege, that DAVID R. FRANCIS
2 is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this
3 Complaint was a resident of the State of Virginia.

4 12. Plaintiffs are informed and believe, and thereupon allege, that KEVIN M. REILLY is
5 an individual over the age of eighteen (18) and is now and/or at all times mentioned in this
6 Complaint was a resident of the State of Virginia.

7 13. Plaintiffs are informed and believe, and thereupon allege, that ILENE R. BAYLINSON is
8 an owner, director, officer, or managing agent of MAXIMUS HEALTH SERVICES, INC. and
9 MAXIMUS SERVICES, LLC. ILENE R. BAYLINSON developed, maintained, implemented, and
10 caused the unlawful wage and hour practices described in the First through Sixth and Eighth causes of
11 action to occur. As such ILENE R. BAYLINSON is individually liable pursuant to California Labor
12 Code section 558.1.

13 14. Plaintiffs are informed and believe, and thereupon allege, that DAVID R. FRANCIS is an
14 owner, director, officer, or managing agent of MAXIMUS HEALTH SERVICES, INC. and MAXIMUS
15 SERVICES, LLC. DAVID R. FRANCIS developed, maintained, implemented, and caused the unlawful
16 wage and hour practices described in the First through Sixth and Eighth causes of action to occur. As
17 such DAVID R. FRANCIS is individually liable pursuant to California Labor Code section 558.1.

18 15. Plaintiffs are informed and believe, and thereupon allege, that KEVIN M. REILLY is an
19 owner, director, officer, or managing agent of MAXIMUS HEALTH SERVICES, INC. and MAXIMUS
20 SERVICES, LLC. KEVIN M. REILLY developed, maintained, implemented, and caused the unlawful
21 wage and hour practices described in the First through Sixth and Eighth causes of action to occur. As
22 such KEVIN M. REILLY is individually liable pursuant to California Labor Code section 558.1.

23 16. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
24 alter egos of MAXIMUS, SERVICES, LLC, MAXIMUS HEALTH SERVICES, INC., MAXIMUS,
25 INC., ILENE R. BAYLINSON, DAVID R. FRANCIS, and KEVIN M. REILLY, corporate or
26 otherwise, who participated in and are liable for the actions herein alleged. Plaintiffs will seek to amend
27 this Complaint to allege the true names and capacities of these DOE defendants when they are
28 ascertained. At all times mentioned herein, each defendant was the agent or employee of each of the

1 other defendants and was acting within the course and scope of such agency or employment. The
2 defendants are jointly and severally liable to Plaintiffs.

3 17. At all times mentioned herein, each Defendant was the agent or employee of each of the
4 other Defendants and were acting within the course and scope of such agency or employment. The
5 Defendants are jointly and severally liable to Plaintiffs.

6 18. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
7 were members of and/or engaged in a joint employment, joint venture, partnership and common
8 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
9 joint venture, partnership and common enterprise.

10 19. Defendants, and each of them, now and/or at all times mentioned in this Complaint
11 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12 20. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
13 wrongs, complaints, injuries and/or damages alleged in this Complaint.

14 **CLASS ALLEGATIONS**

15 21. Plaintiffs bring the First through Seventh Causes of Action on behalf of themselves
16 and all others similarly situated as a class action pursuant to California Code of Civil Procedure
17 section 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

18 All individuals who have, or continue to, perform work for Defendants in
19 California as non-exempt, hourly employees from November 6, 2015 to
20 the present.

21 All individuals who have, or continue to, perform work for Defendants in
22 California as non-exempt, hourly employees who were paid any type of
23 non-discretionary remuneration including incentive bonuses from
November 6, 2015 to the present.

24 22. This action has been brought and may be properly maintained as a class action,
25 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
26 defined community of interests in the litigation and the proposed class is easily ascertainable.

27 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members
28 is impracticable under the circumstances of this case. While the exact number of class

1 members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that
2 Defendants have employed as many as fifty (50) individuals falling within the above
3 stated class definition throughout the State of California during the applicable statute of
4 limitations, who were subjected to the practices outlined in this Complaint. As such,
5 joinder of all members of the Plaintiff Class is not practicable.

6 (b) Common Questions Predominate: Common questions of law and fact exist as to all
7 members of the Plaintiff Class and predominate over questions that affect only individual
8 members of the class. These common questions of law and fact include, without
9 limitation, the following:

- 10 (1) Whether Defendants had a policy and/or practice of paying Plaintiffs and
11 members of the Plaintiff Class for all hours worked;
- 12 (2) Whether Defendants' timekeeping policy and/or practice resulted in the
13 underpayment of regular and overtime wages to Plaintiff and members of the
14 Plaintiff Class;
- 15 (3) Whether Defendants had a policy and/or practice not to take into consideration the
16 value of non-discretionary remuneration, including incentive bonuses, when
17 determining Plaintiffs' and members of the Plaintiff Class regular rates of pay for
18 the purpose of paying overtime wages;
- 19 (4) Whether Defendants paid Plaintiffs and members of the Plaintiff Class for all
20 overtime hours worked;
- 21 (5) Whether Defendants had a policy and/or practice authorizing and permitting
22 Plaintiffs and members of the Plaintiff Class meal periods as required by law;
- 23 (6) Whether Defendants had a policy and/or practice authorizing and permitting
24 Plaintiffs and members of the Plaintiff Class rest periods as required by law;
- 25 (7) Whether Defendants had a policy and/or practice to pay the putative class missed
26 meal period premiums;
- 27 (8) Whether Defendants had a policy and/or practice to pay the putative class missed
28 rest period premiums;

1 (9) Whether as a result of Defendants' payroll policies, or lack thereof, Plaintiffs and
2 Plaintiff Class members received all wages, due and owing, at the time of their
3 termination/separation;

4 (10) Whether Defendants provided Plaintiffs and the Plaintiff Class members with
5 wage statements that complied with Labor Code section 226.

6 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the Plaintiff
7 Class. Plaintiffs also sustained damages arising out of Defendants' common course of
8 conduct in violation of the law as complained of herein. Plaintiffs and all members of the
9 putative class were non-exempt employees who were not paid for all regular and
10 overtime hours worked and were not provided all legally mandated meal and rest periods
11 because of Defendants' policies and practices, resulting in a failure to pay all overtime
12 wages, minimum wages, and meal and rest period premiums. Additionally, Defendants
13 issued Plaintiffs and all members of the putative class wage statements that did not
14 comply with Labor Code section 226. As a result, each putative class member will have
15 the same basis for unpaid wage claims as do Plaintiffs.

16 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the
17 putative class. For all relevant times, Plaintiffs resided in California, worked for
18 Defendants in California, and are adequate representatives of the putative class as
19 Plaintiffs have no interests that are adverse to those of absent class members.
20 Additionally, Plaintiffs have retained counsel who has substantial experience in complex
21 civil litigation and wage and hour matters.

22 (e) Superiority: A class action is superior to other available means for the fair and efficient
23 adjudication of the controversy since individual joinder of all members of the class is
24 impracticable. Class action treatment will permit a larger number of similarly situated
25 persons to prosecute their common claims in a single forum simultaneously, efficiently,
26 and without the unnecessary duplication of effort and expense that numerous individual
27 actions would engender. Further, as damages suffered by each individual member of the
28 class may be relatively small, the expenses and burden of the individual litigation would

1 make it difficult or impossible for individual members of the class to redress the wrongs
2 done to them, and an important public interest will be served by addressing the matter as
3 a class action. The cost to the court system of adjudication of such individualized
4 litigation would be substantial. Individualized litigation would also present the potential
5 for inconsistent or contradictory judgments.

6 23. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
7 management of this action that would preclude its maintenance as a class action.

8 **GENERAL ALLEGATIONS**

9 24. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 23 as though
10 fully set forth herein.

11 25. Plaintiff Eric Aguilar worked for Defendants from approximately April 22, 2005 to
12 the present as a non-exempt employee. Plaintiff Carlos Hercules worked for Defendants from
13 approximately October 1, 2011 to the present as a non-exempt employee. Plaintiffs and similarly
14 situated employees also received various forms of non-discretionary remuneration, including
15 incentive bonuses.

16 26. Plaintiffs and similarly situated employees regularly worked over eight (8) hours in a
17 day or forty (40) hours in a week, incurring overtime. During Plaintiffs' and similarly situated
18 employees' employment, Defendants failed to accurately keep track of Plaintiffs' and similarly
19 situated employees' hours worked. The timekeeping system that Defendants used did not capture the
20 correct start and end times of Plaintiffs and similarly situated employees' shifts, including the
21 beginning and end of meal periods, to the extent any were taken. This resulted in unpaid regular and
22 overtime wages.

23 27. Defendants also did not correctly incorporate the value of the non-discretionary
24 remuneration into Plaintiffs' and similarly situated employees' regular rate of pay when calculating
25 overtime wages.

26 28. Plaintiffs and similarly situated employees were also not provided compensation for
27 sick time under the Healthy Workplace Healthy Family Act of 2014 at the correct rate of pay
28

1 because Defendants failed to incorporate the value of non-discretionary remuneration paid to
2 Plaintiffs and similarly situated employees.

3 29. Defendants failed to authorize and permit Plaintiffs and similarly situated employees
4 to take all meal and rest periods owed to them. Defendants did not have any policies to ensure that
5 meal and rest period were made available to Plaintiffs and similarly situated employees, that meal
6 periods began before the completion of their fifth hour of work, or that Plaintiffs and similarly
7 situated employees received a second meal period and third rest period if they worked more than ten
8 (10) hours in a day. Defendants did not have any policy to pay Plaintiffs and similarly situated
9 employees any premiums for missed meal and rest periods.

10 30. Defendants failed to provide Plaintiffs and similarly situated employees with legally
11 compliant paystubs. The paystubs Defendants issued did not accurately itemize all applicable hourly
12 rates in effect during the pay period, all regular and overtime hours worked and corresponding rates
13 of pay, all meal and rest period premiums owed, and gross and net wages earned. The paystubs also
14 did not accurately itemize Plaintiffs' and similarly situated employees' total hours worked due to
15 Defendants' failure to keep accurate records of Plaintiffs' and similarly situated employees' total
16 hours worked. Plaintiffs and similarly situated employees were not able to promptly and easily
17 determine their total hours worked from their paystubs alone. Additionally, Plaintiffs and similarly
18 situated employees suffered confusion over whether they received all wages owed and were
19 prevented from effectively challenging information on their wage statements. Defendants also did
20 not maintain time records and wage statements for at least three years and did not afford Plaintiffs
21 and similarly situated employees copies of such records upon request.

22 31. As a result of Defendants' policies, at the time of their termination or separation,
23 Plaintiffs and similarly situated employees had amounts for overtime and sick time pay owing to
24 them. To date, Defendants still have not paid these wages to Plaintiffs and similarly situated
25 employees.

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CAUSES OF ACTION
FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to Defendants)

32. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 31 as though fully set forth herein.

33. During the period Plaintiffs and similarly situated employees were employed by Defendants, Defendants were required to compensate Plaintiffs and similarly situated employees at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, Wage Order No. 4-2001, § (3)(A); California Labor Code §§ 510, 1194.

34. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week while in the employ of Defendants. Defendants failed to compensate Plaintiff and similarly situated employees for all overtime worked at Plaintiffs' and similarly situated employees' regular rate of pay in accordance with Wage Order No. 4-2001, section (3)(A) and California Labor Code sections 510, 1194.

35. Plaintiff and similarly situated employees were non-exempt employees under the administrative, executive, and professional exemptions found in IWC Wage Order No. 4-2001, section 1 and California Labor Code section 510.

36. Defendants' conduct described herein violates California Labor Code sections 510 and 1194, and Wage Order No. 4-2001. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged and deprived of overtime wages for three (3) years from the filing of this Complaint. Plaintiffs now seek these wages, as well as attorney's fees and costs and interest pursuant to California Labor Code section 1194.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to Defendants)

37. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 36 as though fully set forth herein.

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1 is no more than twelve (12) hours, the second meal period may be waived so long as there was no
2 waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of
3 compensation for each meal period not provided.

4 45. Plaintiffs allege that Defendants employed Plaintiffs and similarly situated employees for
5 periods of more than five (5) hours without providing meal periods of at least thirty (30) minutes and
6 employed Plaintiff and similarly situated employees for periods of more than ten (10) hours without
7 providing second meal periods of at least thirty (30) minutes. Defendants also failed to allow Plaintiffs
8 and similarly situated employees to take their first meal period before the completion of their fifth hour
9 of work. Plaintiffs and similarly situated employees did not waive their rights to any meal periods
10 throughout their employment relationship.

11 46. As a proximate cause of Defendants' failure to permit meal periods as legally required,
12 Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at their regular rate of
13 compensation for each meal period not provided, as a wage, from three (3) years of the filing of this
14 action. Labor Code § 226.7 and Wage Order 4, § 11(B).

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE REST PERIODS**
17 **(As to Defendants)**

18 47. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 46 as though fully
19 set forth herein.

20 48. An employer must provide an employee a rest period in accordance with the applicable
21 Wage Order and Labor Code section 226.7.

22 49. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 12(A) require an
23 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
24 four (4) hours or a major fraction thereof.

25 50. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
26 situated employees to take rest breaks of at least ten (10) minutes for each work period that Plaintiffs
27 and similarly situated employees worked more than four (4) hours or a major fraction thereof, including
28 a third rest period when Plaintiffs and similarly situated employees worked over ten (10) hours in a day.

1 paystubs also did not accurately itemize Plaintiffs' and similarly situated employees' total hours
2 worked due to Defendants' failure to keep accurate records of Plaintiffs' and similarly situated
3 employees' total hours worked. Plaintiffs and similarly situated employees were not able to
4 promptly and easily determine their total hours worked from their paystubs alone. Additionally,
5 Plaintiffs and similarly situated employees suffered confusion over whether they received all wages
6 owed and were prevented from effectively challenging information on their wage statements.
7 Defendants also did not maintain time records and wage statements for at least three years and did
8 not afford Plaintiffs and similarly situated employees copies of such records upon request.

9 55. As a proximate cause of Defendants' failure to maintain wage statements and provide
10 accurate statements, Plaintiffs and similarly situated employees were damaged as stated in the section
11 below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in
12 full.

13 **SIXTH CAUSE OF ACTION**
14 **WAITING TIME PENALTIES**
(As to Defendants)

15 56. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 55 as though
16 fully set forth herein.

17 57. An employer must pay an employee who is terminated all unpaid wages immediately
18 upon termination. *See* Labor Code § 201.

19 58. An employer must pay an employee who resigns all unpaid wages within seventy-two
20 (72) hours of their resignation. *See* Labor Code § 202.

21 59. Plaintiffs and similarly situated employees did not receive all wages, including minimum
22 and overtime compensation within the required time after Plaintiffs' and similarly situated employees'
23 separation from employment.

24 60. An employer who willfully fails to pay an employee wages in accordance with Labor
25 Code §§ 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See*
26 Labor Code § 203.

27 61. Defendants knew of their obligation to pay Plaintiffs and similarly situated employees all
28 wages owed when their employment ended. Indeed, Defendants had knowledge it did not compensate

1 Plaintiffs and similarly situated employees for all minimum and overtime wages. Such conduct shows
2 Defendants' complete disregard of their obligation to pay Plaintiffs' and similarly situated employees'
3 minimum and overtime wages upon termination and/or separation and their willful refusal.

4 62. As a proximate result of the Defendants' conduct, Plaintiffs and similarly situated
5 employees have been damaged and deprived of their wages and thereby seek their daily rate of pay
6 multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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8 **SEVENTH CAUSE OF ACTION**
9 **UNFAIR COMPETITION**
10 **(As to Defendants MAXIMUS, INC. MAXIMUS SERVICES, LLC, MAXIMUS HEALTH**
11 **SERVICES, INC. and DOES 1 to 100)**

12 63. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 62 as though fully
13 set forth herein.

14 64. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
15 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
16 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
17 California Business and Professions ("B&P") Code § 17200.

18 65. Plaintiffs and similarly situated employees were not paid all wages earned, including
19 minimum and overtime wages and sick leave wages under the Healthy Workplace Healthy Family Act
20 of 2014.

21 66. Plaintiffs are also informed and believe and thereon allege that such actions and/or
22 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
23 Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th
24 163 (2000).

25 67. As a direct and legal result of Defendants' conduct, as alleged herein, pursuant to the
26 UCL (including B&P Code §17203), Plaintiffs are entitled to restitution as a result of its unfair business
27 practices, including, but not limited to, interest and penalties pursuant to B&P §§ 17203, 17208,
28 violations of Labor Code sections 510 and 1194, all in an amount as yet unascertained but subject to
proof at trial, for four (4) years from the filing of this Complaint.

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EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to Defendants)

68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully set forth herein.

69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558 and 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 226.7 & 512 and Wage Order No. 7, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 7, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

70. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

71. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;
2. As to the First Cause of Action:

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- a. Wages in an amount proven at trial;
- b. Interest for the wages due pursuant to Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;

3. As to the Second Cause of Action:

- a. Wages in an amount proven at trial;
- b. Interest for the wages due pursuant to Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
- d. Liquidated damages pursuant to Labor Code section 1194.2;

4. As to the Third Cause of Action:

- a. Wages in an amount proven at trial;
- b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6 and to California Code of Civil Procedure section 1021.5;

5. As to the Fourth Cause of Action:

- a. Wages in an amount proven at trial;
- b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6, and to California Code of Civil Procedure section 1021.5;

6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226(e), including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. Penalties as provided for in Labor Code section 226(f), including seven hundred fifty dollars (\$750.00) per employee;
- c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

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7. As to the Eighth Cause of Action:

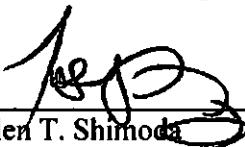
- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period; and
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699.

8. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages in an amount proven at trial;
- b. Injunctive and Declaratory relief;
- c. Reasonable attorney's fees and costs as provided by law; and
- d. Interest.

Dated: October 23, 2020

Shimoda Law Corp.

By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiffs

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the within
7 above-entitled action.

8 On October 23, 2020, I served the following documents on the party below:

- 9 • Third Amended Complaint for Damages

10 Michael S. Kun (SBN: 208684) 11 Kevin Sullivan (SBN: 270343) 12 Kristin M. Halsing (SBN: 318602) 13 EPSTEIN BECKER & GREEN, P.C. 14 1925 Century Park East, Ste. 500 15 Los Angeles, CA 90067 16 Phone: (310) 556-8861 17 Fax: (310) 553-2165 18 Email mkun@ebglaw.com ksullivan@ebglaw.com khalsing@ebglaw.com	
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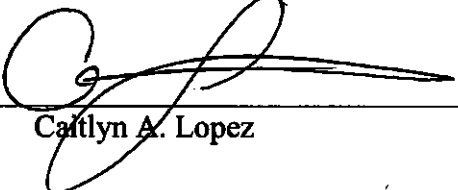
16 [XXX] [By Mail] I am familiar with my employer's practice for the collection and processing
17 of correspondence for mailing with the United States Postal Service and that each
18 day's mail is deposited with the United States Postal Service that same day in the
19 ordinary course of business. On the date set forth above, I served the aforementioned
20 document(s) on the parties in said action by placing a true copy thereof enclosed in a
21 sealed envelope with postage thereon fully prepaid, for collection and mailing on this
22 date, following ordinary business practices, at Elk Grove, California, addressed as set
23 forth above.

24 [] [By Personal Service] By personally delivering a true copy thereof to the office
25 of the addressee above.

26 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
27 above. No error was reported by the e-mail service that I used.

28 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 23, 2020, at Elk Grove, California.


Caitlyn A. Lopez

RECEIVED
IN DROP BOX

2020 OCT 23 AM 10:32

DOWNTOWN COURTHOUSE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO