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24 **UNITED STATES DISTRICT COURT**

25 **CENTRAL DISTRICT OF CALIFORNIA**

26 ERIC AYALA and ADRIAN AVILES,
27 on behalf of themselves and all others
28 similarly situated,

Case No.: 5:20-cv-00117-PSG-AFM

CLASS ACTION

**CONSOLIDATED CLASS
ACTION COMPLAINT FOR:**

- 1. Failure to Provide Meal and Rest
Periods (Lab. Code §§ 226.7, 512,

Plaintiff(s),

vs.



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1 UPS SUPPLY CHAIN SOLUTIONS,
2 INC., a Delaware corporation; UPS
3 SUPPLY CHAIN SOLUTIONS
4 GENERAL SERVICES, INC., a
5 Delaware corporation; and DOES 1-10,
6 inclusive,

7 *Defendant(s).*

- and 1198);
- 2. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
- 3. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
- 4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
- 5. Waiting Time Penalties (Lab. Code §§ 201-203); and
- 6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
- 7. Civil Penalties (Lab. Code §§2698, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiffs ERIC AYALA (“Ayala”) and ADRIAN AVILES (“Aviles”)
2 (hereafter collectively “Plaintiffs”), on behalf of themselves and all others
3 similarly situated, complains and allege as follows:
4

5 **INTRODUCTION**

6 1. Plaintiffs bring this class and representative action based on alleged
7 violations of the California Labor Code, Industrial Welfare Commission Order
8 No. 9-2001 (hereafter “the Wage Order”) and the Business and Professions Code
9 against defendants UPS SUPPLY CHAIN SOLUTIONS, INC., a Delaware
10 Corporation; UPS SUPPLY CHAIN SOLUTIONS GENERAL SERVICES, INC.,
11 a Delaware corporation; and DOES 1 through 50, inclusive (collectively
12 “Defendants”).
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16 2. As set forth in more detail below, Plaintiffs allege that Defendants
17 are liable to them and other similarly situated current and former employees who
18 worked in California as hourly employees, including, but not limited to equipment
19 operators, warehouse workers, shift leads, and persons in similar positions, at any
20 time during the period beginning four years prior to the filing of this action to the
21 present, for unpaid wages and other related relief. These claims are based on
22 Defendants’ alleged failures to (1) provide all rest and meal periods, (2)
23 compensate Plaintiffs and the below-described Class for all hours worked at the
24 correct rates of pay; (3) indemnify Plaintiffs and the below-described Class for
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1 reasonable expenses incurred performing their duties, (4) provide accurate written
2 wage statements, (5) timely pay wages upon termination of employment, and (6)
3 fairly compete. Additionally, Plaintiffs seek civil penalties under the California
4 Labor Code Private Attorneys General Act, Labor Code §§ 2698, *et seq.*
5 (“PAGA”). Accordingly, Plaintiffs now seek to recover unpaid wages and related
6 relief through this class action.
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8

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10 **PARTIES**

11 3. Plaintiff ERIC AYALA is a resident of California. At all relevant
12 times, Plaintiff was an “employee” within the meaning of Title 8 California Code
13 of Regulations Section 11160 and an “aggrieved employee” within the meaning
14 of Labor Code Section 2699(c).
15

16 4. Plaintiff ADRIAN AVILES is a resident of California. At all
17 relevant times, Plaintiff was an “employee” within the meaning of Title 8
18 California Code of Regulations Section 11160 and an “aggrieved employee”
19 within the meaning of Labor Code Section 2699(c).
20
21

22 5. Defendant UPS SUPPLY CHAIN SOLUTIONS, INC. is a
23 corporation organized and existing under the laws of Delaware based on
24 Plaintiffs’ information and belief.
25

26 6. Defendant UPS SUPPLY CHAIN SOLUTIONS GENERAL
27 SERVICES, INC. is a corporation organized and existing under the laws of
28



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1 Delaware based on Plaintiffs' information and belief.

2 7. Plaintiffs are ignorant of the true names, capacities, relationships,
3 and extents of participation in the conduct alleged herein, of the defendants sued
4 as DOES 1-10, inclusive, but is informed and believe and thereon allege that said
5 defendants are legally responsible for the wrongful conduct alleged herein and
6 therefore sues these defendants by such fictitious names. Plaintiffs will amend the
7 Complaint to allege the true names and capacities of the DOE defendants when
8 ascertained.
9

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12 8. Plaintiffs are informed and believe and thereon allege that, at all
13 relevant times herein, all Defendants were the agents, employees and/or servants,
14 masters or employers of the remaining Defendants, and in doing the things
15 hereinafter alleged, were acting within the course and scope of such agency or
16 employment, and with the approval and ratification of each of the other
17 Defendants.
18

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21 9. At all relevant times, in perpetrating the acts and omissions alleged
22 herein, Defendants, and each of them, acted pursuant to and in furtherance of a
23 policy, practice, or a lack of a practice which resulted in Defendants not paying
24 Plaintiffs and the Class in accordance with applicable California labor laws as
25 alleged herein.
26

27
28 10. Plaintiffs are informed and believe and thereon allege that each and



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1 every one of the acts and omissions alleged herein were performed by, and/or are
2 attributable to, all Defendants, each acting as agents and/or employees, and/or
3 under the direction and control of each of the other Defendants, and that said acts
4 and failures to act were within the course and scope of said agency, employment,
5 and/or direction and control.
6
7

8 **CLASS ALLEGATIONS**

9 11. This action has been brought and may be maintained as a class action
10 under Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). Class
11 members are similarly situated persons and there are common questions of law
12 and fact that predominate over any questions that solely affect individual class
13 members. Class treatment is also superior to all other methods for fairly and
14 efficiently adjudicating this controversy because it will allow a large number of
15 similarly situated persons to both simultaneously and efficiently prosecute their
16 common claims in a single forum without the needless duplication of effort and
17 expense that numerous individual actions would entail. Further, Plaintiffs are not
18 aware of any difficulties that are likely to be encountered in the management of
19 this action that would preclude class treatment.
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25 12. **Class Definition:** The Class is defined as follows: all persons
26 Defendants employed in California and paid on an hourly basis, including but not
27 limited to equipment operators, warehouse workers, shift leads, and persons in
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1 comparable positions, at any time during the period beginning four years prior to
2 the filing of this action and ending on the date that final judgment is rendered in
3 this action.
4

5 13. **Reservation of Rights:** Plaintiffs reserve the right to amend or
6 modify the class definitions with greater specificity, by further division into
7 subclasses and/or by limitation to particular issues.
8

9 14. **Numerosity:** The Class is so numerous that the joinder of each
10 individual class member is impractical. While Plaintiffs do not currently know the
11 exact number of the Class, Plaintiffs are informed and believe that the actual
12 number exceeds the minimum required for numerosity under Rule 23.
13
14

15 15. **Commonality and Predominance:** Common questions of law and
16 fact exist as to all class members and predominate over any questions which
17 affect only individual class members. These questions include, but are not limited
18 to:
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21 A. Whether Defendants failed to provide the Class with all rest
22 periods as required by section 11 of the Wage Order;
23

24 B. Whether Defendants failed to provide the Class with all off-
25 duty meal periods as required by section 12 of the Wage Order;
26

27 C. Whether Defendants failed to compensate the Class Members
28 at one hour's pay on days when Defendants failed to provide them with one or



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1 more meal periods in a workday.

2 D. Whether Defendants failed to compensate the Class Members
3 at one hour's pay on days when Defendants failed to provide them with one or
4 more off-duty meal periods in a workday;

5 E. Whether Defendants failed to pay all wages earned to Class
6 Members for all hours worked at the correct rates of pay;

7 F. Whether Defendants failed to indemnify the Class Members
8 for the reasonable expenses they incurred during the course of performing their
9 duties;

10 G. Whether Defendants knowingly and intentionally failed to
11 provide the Class Members with accurate and complete wage statements;

12 H. Whether Defendants knew or should have known that Class
13 Members regularly worked over 40 hours per week and/or eight hours per day;

14 I. Whether Defendants failed to pay Class Members overtime
15 wages for time worked in excess of 40 hours per week and/or eight hours per
16 day;

17 J. Whether Defendants failed to timely pay final wages upon
18 termination of the Class Members' employment;

19 K. Whether Defendants engaged in unfair competition within the
20 meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the
21



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1 Class;

2 L. Whether the Class Members are entitled to restitution of
3 money or property that Defendants may have acquired from them through alleged
4 Labor Code violations;

5 M. Whether the Class Members are entitled to prejudgment
6 interest; and
7

8 N. Are the Class Members entitled to attorneys' fees?

9
10 16. **Typicality:** Plaintiffs' claims are typical of the other Class
11 Members' claims. Plaintiffs are informed and believe and thereon allege that
12 Defendants have a policy, practice, or a lack of a policy which resulted in
13 Defendants failing to comply with the California Labor Code and the Business
14 and Professions Code as alleged herein.
15

16
17 17. **Adequacy of Class Representative:** Plaintiffs are adequate class
18 representatives in that they have no interests that are adverse to, or otherwise in
19 conflict with, the interests of absent class. Plaintiffs are dedicated to vigorously
20 prosecuting this action on behalf of the Class. Plaintiffs will fairly and adequately
21 represent and protect the interests of the Class.
22

23
24 18. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class
25 counsel in that they have no known conflicts of interest with Plaintiffs or absent
26 Class Members, are experienced in class action litigation and are dedicated to
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1 vigorously prosecuting this action on behalf of Plaintiffs and the absent Class.

2 19. **Superiority:** A class action is vastly superior to other available
3 means for fair and efficient adjudication of class' claims and would be beneficial
4 to the parties and the Court. Class action treatment will allow a number of
5 similarly situated persons to simultaneously and efficiently prosecute their
6 common claims in a single forum without the unnecessary duplication of effort
7 and expense that numerous individual actions would entail. In addition, the
8 monetary amounts due to many individual class members are likely to be
9 relatively small and would thus make it difficult, if not impossible, for individual
10 class members to both seek and obtain relief. Moreover, a class action will serve
11 an important public interest by permitting class members to effectively pursue the
12 recovery of monies owed to them. Further, a class action will prevent the
13 potential for inconsistent or contradictory judgments inherent in individual
14 litigation.
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21 **STATEMENT OF FACTS**

22 20. In or about September of 2017, Defendants first employed Plaintiff
23 Ayala to work in California as an equipment operator. Plaintiff worked for
24 Defendants at their Mira Loma, California and Fontana, California locations.
25 Defendants continuously employed Plaintiff Ayala as an equipment operator until
26 approximately March of 2018, when they promoted him to the role of shift lead.
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1 Defendants continuously employed Plaintiff Ayala as a shift lead from that time
2 until approximately January of 2019, when they promoted him to a salaried
3 position as a distribution supervisor. UPS Supply continuously employed Ayala
4 as a distribution supervisor from that time until approximately June of 2019,
5 when his employment ended. At all relevant times, equipment operators and shift
6 leads were hourly, nonexempt positions.
7

9 21. Plaintiff Aviles was employed by Defendant from September of
10 2017 to October of 2019 and was at all times classified by Defendant as a non-
11 exempt employee, paid on an hourly basis, and entitled to the legally required
12 meal and rest periods and payment of minimum and overtime wages due for all
13 time worked. Plaintiff Aviles worked as a Warehouse Associate at Defendant's
14 Mira Loma location.
15

17 22. Plaintiffs and the Class Members earned their wages at an hourly
18 rate and Defendants provided them with paychecks on a weekly basis. At relevant
19 times, Plaintiffs and the Class Members worked shifts in excess of 12 hours,
20 worked between five and seven days in a workweek, and also worked over 40
21 hours in a workweek.
22

23 23. Defendants required Plaintiffs and the Class Members to incur
24 certain business expenses in the course of performing their duties, including the
25 use of their personal mobile telephones to communicate with Defendants. At
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1 relevant times during the applicable limitations period, Defendants also required
2 Plaintiffs and the Class Members to travel between worksites for company
3 business while clocked out. Defendants failed to reimburse Plaintiffs and the
4 Class for such mileage-related expenses.
5

6 24. At relevant times within the applicable limitations period,
7 Defendants failed to provide Plaintiffs and the Class Members with an off-duty,
8 30-minute meal period before the end of the fifth hour worked or with a second
9 off-duty, 30-minute meal period before the end of the tenth hour worked. At
10 relevant times, Defendants also failed to authorize and permit Plaintiffs and the
11 Class Members to take a ten-minute, paid, duty-free rest break every four hours or
12 major portion thereof. On information and belief, Defendants failed to seek an
13 exemption from the rest period protections of the Wage Order from the California
14 Division of Labor Standards Enforcement. On information and belief, Defendants
15 did not enter into on-duty meal period agreements or meal period waivers with
16 Plaintiffs or any of the Class Members, nor did the nature of their work require
17 on-duty meal periods or rest breaks. Defendants further failed to pay Plaintiffs
18 and the Class Members premium wages for shifts on which they worked during
19 their meal periods and rest breaks.
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22 25. On the occasions when Defendants did provide meal and rest
23 periods to Plaintiffs and the Class, they frequently interrupted Plaintiffs' and the
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1 Class Members’ meal and rest periods and required them to perform work.
2 Further, Defendants required Plaintiffs and the Class Members to clock out from
3 one of Defendants’ computer terminals and pass through security checkpoints
4 before taking their meal periods. Defendants also required Plaintiffs and the Class
5 Members to pass through security and clock back in upon returning from meal
6 periods. This process could take 8 to 15 minutes to complete. Defendants only
7 provided 30 minute meal periods – consequently, Plaintiffs and the Class
8 Members were consistently provided with less than 30 minute meal periods as a
9 result of off-the-clock work performed in adhering to Defendant’s clock in/out
10 and security procedures.
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15 26. Defendants required Plaintiffs and the Class Members to follow the
16 same clock in/out procedures described in the preceding paragraph at the
17 beginning and end of their workdays. As noted above, at relevant times,
18 Defendants also required Plaintiffs and the Class Members to travel between
19 work locations while clocked out. Defendants further interrupted Plaintiffs’ and
20 the Class Members meal periods and required them to perform work while
21 clocked out for meal periods. Additionally, at relevant times, Plaintiffs; manager,
22 Saul Delagos, instructed Plaintiffs and the Class Members to arrive at work by
23 4:30 a.m., although Plaintiffs’ actual start time was 5:00 a.m. On such occasions,
24 Defendants adjusted Plaintiffs’ and the Class Members’ time records to exclude
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1 work performed between 4:30 a.m. and 5:00 a.m.

2 27. Defendants frequently required Plaintiffs and the Class Members to
3 perform work after clocking out at the end of their shifts, particularly at month
4 and quarter ends. On such occasions, Defendants, through their manager Mike
5 Johnson, required Plaintiffs and the Class Members to clock out at their scheduled
6 times and then to continue to work, informing Plaintiffs and the Class that
7
8 “overtime [was] not approved.”
9

10 28. Defendants failed to maintain accurate written employee records
11 pertaining to Plaintiffs and the other Class Members, including accurate wage
12 statements itemizing each Class Member’s gross wages earned, net wages earned,
13 total hours worked, corresponding number of hours worked at each rate by the
14 Class Member, and other requirements of California Labor Code § 226.
15
16

17 29. At all relevant times, upon resignation or termination, Defendants
18 failed to pay final wages in a timely manner as a result of their failure to pay
19 employees for all work performed off-the-clock. Defendants willfully failed and
20 refused to pay timely compensation and wages, including, but not limited to,
21 regular time and overtime wages for off the clock work performed before the
22 beginning of their shifts, during meal periods, and after clocking out at the end of
23 their shifts.
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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiffs and the Class against all Defendants)

30. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

31. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

32. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

33. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work



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period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

34. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

35. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall



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be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

36. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

37. Pursuant to California Labor Code § 512 and the Wage Order,

Plaintiffs and the Class Members were entitled to uninterrupted meal periods of at



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1 least 30 minutes for each day they worked five or more hours. Pursuant to
2 California Labor Code § 512, they were also entitled to a second 30-minute meal
3 period when they worked more than 10 hours in a workday.
4

5 38. Pursuant to the Wage Order, Plaintiffs and the Class Members were
6 entitled to be provided with net rest breaks of at least ten minutes for each four-
7 hour period of work, or major fraction thereof.
8

9 39. Defendants intentionally failed to provide Plaintiffs and the Class
10 Members with all required 30-minute duty free meal periods and 10-minute rest
11 periods in accordance with the Wage Order. Plaintiffs are informed and believe
12 and thereon allege that, at all relevant times within the applicable limitations
13 period, Defendants had a policy, practice, or a lack of a policy which resulted in
14 Defendants not providing the Class with all off-duty meal periods and rest breaks
15 required by California law.
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19 40. As a result of Defendants' unlawful conduct, Plaintiffs and the Class
20 Members have suffered damages in an amount, subject to proof, to the extent they
21 were not paid the full amount of wages earned during each pay period during the
22 applicable limitations period.
23
24

25 41. By reason of the above, pursuant to California Labor Code section
26 226.7, Plaintiffs and the Class Members are entitled to premium wages for
27 workdays in which one or more off-duty meal periods were not provided to them,
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1 and for workdays in which one or more rest breaks were not provided to them.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

4 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

5 **(By Plaintiffs and the Class against all Defendants)**

6
7
8 42. Plaintiffs incorporates all paragraphs of the Complaint as if fully
9 alleged herein.

10
11 43. At all relevant times, Plaintiffs and the Class Members have been
12 non-exempt employees of Defendants and entitled to the benefits and protections
13 of California Labor Code § § 510, 1194, 1197, 1198, and the Wage Order.

14
15 44. Section 2 of the Wage Order defines “hours worked” as “the time
16 during which an employee is subject to the control of an employer, and includes
17 all the time the employee is suffered or permitted to work, whether or not
18 required to do so.”

19
20
21 45. Section 3 of the Wage Order states:

22 **(A) Daily Overtime - General Provisions**

23
24 (1) The following overtime provisions are applicable to
25 employees 18 years of age or over and to employees 16
26 or 17 years of age who are not required by law to attend
27 school and are not otherwise prohibited by law from
28 engaging in the subject work. Such employees shall not
be employed more than eight (8) hours in any workday
or more than 40 hours in any workweek unless the



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employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.

46. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

47. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any



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one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

48. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

49. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

50. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

51. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22



1 Cal.4th 575, 585.)

2 52. Plaintiffs are informed and believe that, at all relevant times,
3 Defendants have applied centrally devised policies and practices to them and the
4 Class Members with respect to working conditions and compensation
5 arrangements.
6

7
8 53. At all relevant times, Defendants paid Plaintiffs and the Class
9 Members at an hourly rate on a weekly basis.
10

11 54. At all relevant times, Defendants failed to pay Plaintiffs and the
12 Class Members for all hours worked at the correct rates of pay, including, but not
13 limited to, regular and overtime wages for all regular and overtime hours they
14 worked while clocked out, as well as all wages for work they performed during
15 off duty meal and rest periods.
16

17
18 55. Plaintiffs are informed and believe and thereon allege that, at all
19 relevant times, Defendants maintained a policy and/or practice, or lack thereof,
20 which resulted in Defendants' failure to compensate the Class for all hours
21 worked at the correct rate of pay as required by California law.
22

23
24 56. As a result of Defendants' unlawful conduct, Plaintiffs and the Class
25 Members have suffered damages in an amount, subject to proof, to the extent that
26 they were not paid the full amount of wages earned during each pay period during
27 the applicable limitations period, including minimum, overtime, and double-time
28



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1 wages.

2 57. Pursuant to California Labor Code § 1194, Plaintiffs, on behalf of
3 themselves and Class Members, seeks to recover unpaid wages, liquidated
4 damages in amounts equal to the amounts of unpaid wages, interest thereon, and
5 awards of reasonable costs and attorneys’ fees, including interest thereon, as
6 permitted by law, all in amounts subject to proof.
7
8

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **(Lab. Code §§ 1198 & 2802)**

12 **(By Plaintiffs and the Class against all Defendants)**

13
14
15 58. Plaintiffs incorporate all paragraphs of this Complaint as if fully
16 alleged herein.
17

18 59. At all relevant times, Plaintiffs and the Class Members have been
19 non-exempt employees of Defendants and entitled to the benefits and protections
20 of the California Labor Code §§ 1198 and 2802 and the Wage Order.
21

22 60. In pertinent part, California Labor Code § 2802(a) states:

23 “An employer shall indemnify his or her employee[s]
24 for all necessary expenditures incurred by the employee
25 in direct consequence of the discharge of his or her
26 duties.”

27 61. Section 9(B) of the Wage Order states:

28 When tools or equipment are required by the employer



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or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

62. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

63. At relevant times during the applicable limitations period, Defendants required Plaintiffs and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiffs and the Class Members to use personal cell phones to communicate with Defendants as a necessary condition of employment. Defendants, however, failed to reimburse Plaintiffs and the Class Members for these expenses. Further, at relevant times, Defendants required Plaintiffs and the Class Members to travel between company locations for company business but failed to indemnify them for their mileage expenses.

64. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiffs and the Class Members for the reasonable expenses they incurred during the course of performing their duties.



1 65. Therefore, pursuant to California Labor Code § 2802(b), Plaintiffs
2 and the Class Members are entitled to reimbursement for all necessary
3 expenditures and losses and interest thereon, due and owing to them within four
4 years of the date of the filing of the Complaint until the entry of judgment.
5

6 66. Accordingly, with respect to this cause of action, on behalf of
7 themselves and the Class Members, Plaintiffs pray for the above stated relief,
8 costs, and all reasonable attorneys’ fees pursuant to Labor Code § 2802(c) and as
9 otherwise permitted by law.
10
11

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

14 **(Lab. Code § 226)**

15 **(By Plaintiffs and the Class against all Defendants)**

16
17 67. Plaintiffs incorporates all paragraphs of this Complaint as if fully
18 alleged herein.
19

20
21 68. Pursuant to California Labor Code § 226(a), Plaintiffs and the Class
22 Members were entitled to receive, semimonthly or at the time of each payment of
23 wages, an accurate itemized statement showing, among other items, 1) gross
24 wages earned; 2) total hours worked, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27
28



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1 Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee.
4

5 69. Pursuant to California Labor Code § 226(e), an employee is deemed
6 to suffer injury if the employer fails to provide a wage statement. Additionally, an
7 employee is deemed to suffer injury if the employer fails to provide accurate and
8 complete information as required by California Labor Code § 226(a) and the
9 employee cannot “promptly and easily determine” from the wage statement alone
10 one or more of the following:
11
12

13 A. The amount of the gross wages or net wages paid to the
14 employee during the pay period or any of the other information required to be
15 provided on the itemized wage statement pursuant to California Labor Code §
16 226(a);
17
18

19 B. Which deductions the employer made from gross wages to
20 determine the net wages paid to the employee during the pay period;
21

22 C. The name and address of the employer and, if the employer is
23 a farm labor contractor, as defined in subdivision (b) of Section 1682 of the
24 California Labor Code, the name and address of the legal entity that secured the
25 services of the employer during the pay period; and
26
27

28 D. The name of the employee and only the last four digits of his



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1 or her social security number or an employee identification number other than a
2 social security number.

3
4 70. “Promptly and easily determine,” as stated in California Labor Code
5 § 226(e), means a reasonable person would be able to readily ascertain the
6 information without reference to other documents or information.
7

8 71. As alleged herein, Defendants failed to provide Plaintiffs and the
9 Class Members all wages owed, including but not limited to, all regular and
10 overtime wages owed at the correct rates. As a result, Defendants have failed to
11 properly and accurately itemize each employee’s gross wages earned, net wages
12 earned, the total hours worked, the corresponding number of hours worked by
13 employees, and other requirements of California Labor Code § 226. As a result,
14 Defendants have violated California Labor Code § 226.
15
16
17

18 72. Defendants’ failure to provide Plaintiffs and the Class Members with
19 accurate wage statements was knowing and intentional. Defendants had the
20 ability to provide Plaintiffs and the Class with accurate wage statements but
21 intentionally provided wage statements that Defendants knew were not accurate.
22
23

24 73. As a result of being provided with inaccurate wage statements by
25 Defendants, Plaintiffs and the Class have suffered injury. Their legal rights to
26 receive accurate wage statements were violated and they were misled about the
27 amount of wages they had actually earned and were owed. In addition, the
28



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1 absence of accurate information on their wage statements prevented immediate
2 challenges to Defendants’ unlawful pay practices, has required discovery and
3 mathematical computations to determine the amounts of wages owed, has caused
4 difficulty and expense in attempting to reconstruct time and pay records and/or
5 has led to the submission of inaccurate information about wages to state and
6 federal government agencies. Further, Plaintiffs and the Class Members were not
7 able to ascertain from the wage statements whether Defendants complied with
8 their obligations under California Labor Code § 226(a).
9
10
11

12 74. Pursuant to California Labor Code § 226(e), Plaintiffs and the Class
13 are entitled to recover the greater of actual damages, or penalties of fifty dollars
14 (\$50.00) for the initial pay period in which a violation of California Labor Code §
15 226(a) occurred and one hundred dollars (\$100.00) for each violation of
16 California Labor Code § 226(a) in a subsequent pay period, not to exceed an
17 aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
18 also entitled to an award of costs and reasonable attorneys’ fees.
19
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21

22 **FIFTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(Lab. Code §§ 201-203)**

25 **(By Plaintiffs and the Class against all Defendants)**

26
27
28 75. Plaintiffs incorporate all paragraphs of this Complaint as if fully



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1 alleged herein.

2 76. At all relevant times during the applicable limitations period,
3 Plaintiffs and the Class Members have been non-exempt employees of
4 Defendants and entitled to the benefits and protections of California Labor Code
5 §§ 201-203 and the Wage Order.
6

7
8 77. California Labor Code § 201 provides that all earned and unpaid
9 wages of an employee who is discharged are due and payable immediately at the
10 time of discharge.
11

12 78. California Labor Code § 202 provides that all earned and unpaid
13 wages of an employee who quits after providing at least 72-hours notice before
14 quitting are due and payable at the time of quitting and that all earned and unpaid
15 wages of an employee who quits without providing at least 72-hours notice before
16 quitting are due and payable within 72 hours.
17

18
19 79. By failing to pay earned regular and overtime wages to Plaintiffs and
20 the Class Members at the correct rates, Defendants failed to timely pay them all
21 earned and unpaid wages in violation of California Labor Code § 201 or § 202.
22

23
24 80. Plaintiffs are informed and believe that Defendants' failures to
25 timely pay all final wages to them and the Class Members have been willful in
26 that Defendants have the ability to pay final wages in accordance with California
27 Labor Code §§ 201 and 202 but have intentionally adopted policies or practice
28



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1 that are incompatible with those requirements.

2 81. California Labor Code § 203 provides that the wages of an employee
3 continue on a daily basis as a penalty for up to 30 days where an employer
4 willfully fails to timely pay earned and unpaid wages to the employee in
5 accordance with California Labor Code § 201 or § 202.
6

7
8 82. Plaintiffs are informed and believe that Defendants’ failures to
9 timely pay Plaintiffs and the Class Members all of their earned and unpaid wages
10 have been willful in that, at all relevant times, Defendants have deliberately
11 maintained policies and practices that violate the requirements of the Labor Code
12 and the Wage Order even though, at all relevant times, they have had the ability
13 to comply with those legal requirements.
14
15

16 83. Pursuant to California Labor Code § 203, Plaintiffs seek waiting
17 time penalties on behalf of themselves and the Class, in amounts subject to proof
18 not to exceed 30 days of waiting time penalties for each Class Member.
19
20

21 **SIXTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(Bus. & Prof. Code §§ 17200, et seq.)**

24 **(By Plaintiffs and the Class against all Defendants)**

25
26 84. Plaintiffs incorporate all paragraphs of this Complaint as if fully
27 alleged herein.
28



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1 85. At all relevant times, Plaintiffs and the Class Members have been
2 non-exempt employees of Defendants and entitled to the benefits and protections
3 of the Business and Professions Code §§ 17200, et seq.
4

5 86. The unlawful conduct of Defendants alleged herein amounts to and
6 constitutes unfair competition within the meaning of California Business &
7 Professions Code §§ 17200, et seq. Due to their unfair and unlawful business
8 practices alleged herein, Defendants have unfairly gained a competitive
9 advantage over other comparable companies doing business in California that
10 comply with their legal obligations to, among other things, pay their employees
11 premium wages for workdays in which they did not provide employees with one
12 or more meal and rest periods, reimburse their employees for reasonable expenses
13 incurred during the course of performing their duties, and pay them all earned
14 wages for all regular and overtime hours worked.
15
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19 87. As a result of Defendants' unfair competition as alleged herein,
20 Plaintiffs and the Class Members have suffered injuries in fact and have lost
21 money or property. Defendants deprived Plaintiffs and the Class Members of
22 minimum wages, overtime wages, double-time wages, premium wages for all
23 workdays one or more meal periods was not provided, premium wages for all
24 workdays a rest period was not provided, and reimbursement for expenses that
25 Plaintiffs and the other Class Members incurred during the course of performing
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1 their duties.

2 88. Pursuant to California Business & Professions Code § 17203,
3
4 Plaintiffs and the Class Members are entitled to restitution of all monies rightfully
5 belonging to them that Defendants did not pay them or otherwise retained by
6 means of their unlawful and unfair business practices.
7

8 89. Plaintiffs and the Class are entitled to reasonable attorneys’ fees in
9 connection with their unfair competition claims pursuant to California Code of
10 Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common
11 fund doctrine.
12

13 90. Accordingly, with respect to this cause of action, on behalf of
14 themselves and the Class, Plaintiffs pray for the herein stated relief, and an award
15 of all reasonable costs and attorneys’ fees, including interest thereon, as permitted
16 by law, all in amounts subject to proof.
17

18
19 **SEVENTH CAUSE OF ACTION**

20
21 **CIVIL PENALTIES**

22 **(By Plaintiff Ayala and the Class against all Defendants)**

23 91. Plaintiff Ayala incorporates all paragraphs of this Complaint as if
24 fully alleged herein.
25

26 92. Labor Code § 204 states

27 (a) All wages, other than those mentioned in Section 201, 201.3,
28



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201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangement, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

93. Defendants paid wages to employees on weekly intervals. Defendants failed to pay Plaintiff Ayala on such intervals for all wages earned and all hours worked, including, but not limited to, regular and overtime wages for work performed off-the-clock. On information and belief, Plaintiff Ayala



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1 allege that Defendants also failed to pay the aggrieved employees on such
2 intervals for all wages earned and all hours worked.

3
4 94. During the applicable time period, Defendants violated California
5 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198,
6 and 2802.

7
8 95. California Labor Code §§ 2699(a) and (g) authorize an aggrieved
9 employee, on behalf of themselves and other current or former employees, to
10 bring a civil action to recover civil penalties pursuant to the procedures specified
11 in California Labor Code § 2699.3.

12
13 96. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff
14 Ayala and the Class are entitled to recover civil penalties for each of the
15 Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226,
16 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable
17 limitations period in the following amounts:
18
19

20
21 A. For violations of California Labor Code § 204, one hundred
22 dollars (\$100.00) for each aggrieved employee for each initial violation and two
23 hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent
24 (25%) of the amount unlawfully withheld from each aggrieved employee for each
25 subsequent, willful or intentional violation (penalty amounts established by
26 California Labor Code § 210).
27
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1 B. For violations of California Labor Code § 226(a), two hundred
2 fifty dollars (\$250.00) for each aggrieved employee for initial violations and one
3 thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent
4 violation (penalty amounts established by California labor Code § 226.3).
5

6 C. For violations of California Labor Code §§ 510 and 512, fifty
7 dollars (\$50.00) for each aggrieved employee for initial violations and one
8 hundred dollars (\$100.00) for each aggrieved employee for each subsequent
9 violation, per pay period in addition to an amount sufficient to recover underpaid
10 wages (penalty amounts established by California Labor Code § 558).
11

12 D. For violations of California Labor Code § 1174, five hundred
13 dollars (\$500.00) for each aggrieved employee for each violation (penalty
14 amounts established by California Labor Code § 1174.5).
15

16 E. For violations of California Labor Code § 1197, one hundred
17 dollars (\$100.00) for each aggrieved employee per pay period for each initial and
18 intentional violation and two hundred fifty dollars (\$250.00) for each aggrieved
19 employee per pay period for each subsequent violation (regardless of whether the
20 initial violations were intentionally committed), in addition to an amount
21 sufficient to recover unpaid wages (penalty amounts established by California
22 Labor Code § 1197.1).
23
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25
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27 F. For violations of California Labor Code §§ 201, 202, 203,
28



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1 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved
2 employee per pay period for each initial violation and two hundred dollars
3 (\$200.00) for each aggrieved employee per pay period for each subsequent
4 violation (penalty amounts established by California Labor Code § 2699(f)(2)).
5

6 97. Plaintiff Ayala has complied with the procedures for bringing suit
7 specified in California Labor Code § 2699.3. By letter dated November 27, 2019,
8 Plaintiff Ayala filed written notice online with the Labor and Workforce
9 Development Agency (“LWDA”) and gave written notice by certified mail to
10 Defendants of the specific provisions of the California Labor Code alleged to
11 have been violated, including the facts and theories to support the alleged
12 violations. Plaintiff Ayala accompanied his LWDA notice with a fee in the
13 amount of \$75.00. The LWDA has failed to take action in response within 65
14 calendar days of the date of Plaintiff Ayala’s notice, but Plaintiff anticipates that
15 the LWDA will provide written notice to Plaintiff Ayala informing him that it
16 does not intend to investigate these allegations.
17
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22 98. Pursuant to California Labor Code § 2699(g), Plaintiffs and the
23 aggrieved employees are entitled to an award of civil penalties, reasonable
24 attorney’s fees and costs in connection with their claims for civil penalties.
25

26
27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for



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1 relief and judgment against Defendants as follows:

- 2 A. An order that the action be certified as a class action;
- 3 B. An order that Plaintiffs be appointed class representatives;
- 4 C. An order that counsel for Plaintiffs be appointed class counsel;
- 5 D. Unpaid wages;
- 6 E. Actual damages;
- 7 F. Statutory damages;
- 8 G. Liquidated damages;
- 9 H. Restitution;
- 10 I. Declaratory relief;
- 11 J. Equitable relief;
- 12 K. Statutory penalties;
- 13 L. Civil Penalties
- 14 M. Pre-judgment and post-judgment interest;
- 15 N. Costs of suit;
- 16 O. Interest;
- 17 P. Reasonable attorneys' fees; and
- 18 Q. Such other relief as the Court deems just and proper.

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27 **DEMAND FOR JURY TRIAL**

28 Plaintiffs, on behalf of themselves and all others similarly situated, hereby



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1 demands a jury trial on all issues so triable.

2 Respectfully submitted,

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THE SPIVAK LAW FIRM

Dated: May 1, 2020

By: /s/ David Spivak
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, ERIC AYALA and all
others similarly situated

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

Dated: May 1, 2020

By: /s/ Aparajit Bhowmik (authorized 4/30/2020)
NORMAN B. BLUMENTHAL
APARAJIT BHOWMIK
Attorneys for Plaintiff, Adrian Aviles and all
others similarly situated



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