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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10
11 TEODORO CONTRERAS, an individual,

12 Plaintiff,

13 v.

14
15 HERNAN ROBERTO DAZA;
16 PERFORMANCE TEAM WAREHOUSE,
17 INC.; and
18 DOES 1 through 5;

19 Defendants.

UNLIMITED CIVIL CASE

Case No.: 37-2020-00009657-CU-OE-CTL

COMPLAINT FOR DAMAGES:

- 1) Failure to Pay Minimum Wage (Labor Code §§1194, 1194.2, 1197)
- 2) Failure to Pay Overtime and Double-time Wages (Lab. Code §§ 510,1194)
- 3) Failure to Pay Wages for Missed Meal Periods and Rest Periods (Labor Code §§226.7, 512)
- 4) Failure to Promptly Pay Wages Owed (Lab. Code §§201-204, 210)
- 5) Negligence Per Se;
- 6) Violation of Business and Professional Code §17200

Demand for Jury Trial

1 Plaintiff Teodoro Contreras alleges as follows:
2

3 **INTRODUCTION**
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- 5 1. This case is about an employer that violated California Labor Law by:
6 - Requiring Plaintiff Contreras to work six days per week and fifty-six hours per
7 week;
8 - Not providing rest and meal breaks to Plaintiff Contreras;
9 - Paying Plaintiff Contreras a flat \$380 week between 2019 to January 2020 which
10 were below minimum wage;
11 - Paying Plaintiff Contreras a flat \$300 week between 2012 to 2019 which were
12 below minimum wage.
13 - Paying Plaintiff Contreras a flat wage per week from 1994 to 2012 which were
14 below minimum wage.
15 - Not having worker's compensation insurance for to cover Contreras's workplace
16 injuries.
17

18 **VENUE**
19

20 2. This Court has jurisdiction over Defendants because each is a business entity or
21 individual that is either based in, authorized or registered to conduct, or in fact conducts,
22 substantial business in the State of California, County of San Diego.
23

24 **PARTIES**
25

- 26 3. Plaintiff Teodoro Contreras resides in San Diego County.
27 4. Defendant Hernan Robert Daza is a resident of San Diego County.
28 5. Defendant Performance Team Warehouse Inc., is a California corporation doing business

1 in San Diego County.
2

3 **STATEMENT OF FACTS**
4

5 6. Defendant Performance Team Warehouse, Inc. was in the business of selling and
6 installing wheels and tires for vehicles. Defendant Hernan Daza was the principal and sole
7 officer for Performance Team Warehouse, Inc.; Hernan Daza made all decisions for wages.

8 7. Plaintiff Teodoro Contreras worked for defendants for twenty-six years installing wheels
9 and tires; Contreras's job duties required him to lift heavy wheels and tires for installation to
10 vehicles. Contreras suffered pain to his arm and shoulder but was not provided worker's
11 compensation insurance coverage.

12 8. Defendants paid Contreras as follows: Paid Contreras a flat \$380 week between 2019 to
13 January 2020 which were below minimum wage; Paid Contreras a flat \$300 week between 2012
14 to 2019 which were below minimum wage; Paid Contreras a flat wage per week from 1994 to
15 2012 which were below minimum wage. Defendants required Contreras to work six days per
16 week and fifty-six hours per week without providing meal and rest breaks.

17 9. **Alter Ego.** Employer Hernan Daza was the sole officer, director, and shareholder of the
18 corporation Performance Team Warehouse, Inc., and acted in such a way that the corporation
19 was the alter ego of Daza who used the entity for his own purposes. There is a unity of interest
20 between Hernan Daza and the corporation. Hernan Daza has a beneficial interest as the owner of
21 the corporation. The corporation was operated and controlled entirely by Hernan Daza and the
22 unity of interest includes:

- 23
- 24 • Commingling of funds;
 - 25 • Diversion of funds or assets e.g., cash paid by customers went to line Daza's
26 pockets;
 - 27 • Disregard of corporate formalities.
 - 28 • Officers and directors of one entity are the same as in controlled corporation;
 - Total absence of corporate assets.

- 1 • Undercapitalization.
- 2 • Failure to maintain arm's length relationships among related equities.
- 3 • The Diversion of assets from a corporation by or to a stockholder or other person
- 4 or entity to the detriment of creditors.

5 An inequitable result will occur if the Court recognizes the corporate form over the substance
6 and nature of the injury.

7
8 **FIRST CAUSE OF ACTION**

9 Failure to Pay Minimum Wage

10 Labor Code §§1194, 1194.2, 1197

11 (Plaintiff against all defendants)

- 12
- 13 10. All preceding paragraphs are incorporated hereunder.
 - 14 11. Labor Code section 1194 entitles an employee receiving less than the minimum wage to
 - 15 recover, in a civil action, the unpaid balance of minimum wages owed, plus interest
 - 16 thereon, reasonable attorneys' fees, and costs of suit.
 - 17 12. Labor Code section 1194.2 entitles an employee receiving less than the minimum wage to
 - 18 recover liquidated damages in an amount equal to the unpaid minimum wages and
 - 19 interests thereon.
 - 20 13. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum
 - 21 wage, as established by the Industrial Welfare Commission, for each hour worked.
 - 22 14. Contreras was harmed because, for twenty-six years, Contreras worked six days per
 - 23 week, an estimated fifty-six hours per week for a flat rate weekly wage which were below
 - 24 the minimum wage without overtime and double time. Additionally, except for few rest
 - 25 period and lunch breaks, Contreras nearly did not receive rest or meal breaks.
 - 26 15. Defendants are liable to Plaintiff, for unpaid minimum-wage compensation pursuant to
 - 27 California Labor Code sections 1194 and 1197, and Wage Order 17-2001, liquidated
 - 28 damages in an amount equal to the unpaid wages owed to such employees, plus interest,

1 pursuant to California Labor Code sections 1194.2, and attorneys' fees and costs of suit,
2 pursuant to California Labor Code sections 1194 and 1194.2.

3
4 **SECOND CAUSE OF ACTION**

5 Failure to Pay Overtime and Double-time Wages

6 Lab. Code §§ 510, 1194

7 (Plaintiff against all defendants)

- 8
9 16. All preceding paragraphs are incorporated hereunder.
- 10 17. California Labor Code § 510 provides: "Any work in excess of eight hours in one
11 workday and any work in excess of 40 hours in any one workweek and the first eight
12 hours worked on the seventh day of work in any one workweek shall be compensated at
13 the rate of no less than one and one-half times the regular rate of pay for an employee."
14 Further, pursuant to California Labor Code § 1194 "any employee receiving less than the
15 legal minimum wage or the legal overtime compensation applicable to the employee is
16 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
17 wage or overtime compensation, including interest thereon, reasonable attorney's fees,
18 and costs of suit."
- 19 18. Labor Code section 1194 entitles an employee receiving less than the minimum wage to
20 recover, in a civil action, the unpaid balance of minimum wages owed, plus interest
21 thereon, reasonable attorneys' fees, and costs of suit.
- 22 19. From June 2018 to September 2019, Plaintiff Contreras worked for defendants six days
23 per week, and an estimated fifty-six hours but was not paid overtime or double time pay.
24 Additionally, except for few rest period and lunch breaks, Contreras nearly did not
25 receive rest or meal breaks.
- 26 20. Defendants are liable to Plaintiff, for unpaid overtime and double time wage
27 compensation pursuant to California Labor Code sections 510, 1194 and 1197, and Wage
28 Order 17-2001, liquidated damages in an amount equal to the unpaid wages owed to such

1 employees, plus interest, pursuant to California Labor Code sections 1194.2, and
2 attorneys' fees and costs of suit, pursuant to California Labor Code sections 1194 and
3 1194.2.

4 **THIRD CAUSE OF ACTION**

5 Failure to Pay Wages for Missed Meal Periods and Rest Periods

6 Lab. Code §§ 226.7, 512

7 (Plaintiff against all defendants)

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9 21. All preceding paragraphs are incorporated hereunder.

10 22. Labor Code section 226.7(b) provides:

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

15 23. Labor Code section 226.7(c) provides:

16 "If an employer fails to provide an employee a meal or rest or recovery period in accordance
17 with a state law, including, but not limited to, an applicable statute or applicable
18 regulation, standard, or order of the Industrial Welfare Commission, the Occupational
19 Safety and Health Standards Board, or the Division of Occupational Safety and Health,
20 the employer shall pay the employee one additional hour of pay at the employee's regular
21 rate of compensation for each workday that the meal or rest or recovery period is not
22 provided."

23 24. Labor Code section 512(a) provides:

24 "(a) An employer shall not employ an employee for a work period of more than five hours per
25 day without providing the employee with a meal period of not less than 30 minutes,
26 except that if the total work period per day of the employee is no more than six hours, the
27 meal period may be waived by mutual consent of both the employer and employee. An
28 employer shall not employ an employee for a work period of more than 10 hours per day

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

5 25. IWC Wage Order 17-2001, section 5(G) provides:

6 "The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7)
7 shall not be construed to prevent an accumulation of days of rest when the nature of the
8 employment reasonably requires the employee to work seven (7) or more consecutive
9 days; provided, however, that in each calendar month, the employee shall receive the
10 equivalent of one (1) day's rest in seven (7)."

11 26. IWC Wage Order 17-2001, section 9(A) provides:

12 "No employer shall employ any person for a work period of more than five (5) hours without a
13 meal period of not less than 30 minutes, except that when a work period of not more than
14 six (6) hours will complete the day's work the meal period may be waived by mutual
15 consent of the employer and the employee."

16 27. IWC Wage Order 17-2001, section 9(B) provides:

17 "An employer may not employ an employee for a work period of more than ten (10) hours per
18 day without providing the employee with a second meal period of not less than 30
19 minutes, except that if the total hours worked is no more than 12 hours, the second meal
20 period may be waived by mutual consent of the employer and the employee only if the
21 first meal period was not waived."

22 28. IWC Wage Order 17-2001, section 9(C) provides:

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

27 29. Except for few rest period and lunch breaks, Contreras nearly did not receive rest or meal
28 breaks.

1 30. Remy and Hopnonymous are liable to Plaintiff for his unpaid premium wages for missed
2 rest periods under the authorities cited above.

3
4 **FOURTH CAUSE OF ACTION**

5 Failure to Promptly Pay Wages Owed

6 Labor Code §§ 201-204

7 (Plaintiff against all defendants)

8
9 31. All preceding paragraphs are incorporated hereunder.

10 32. Pursuant to Labor Code section 201,

11 “[i]f an employer discharges an employee, the wages earned and unpaid at the time of
12 discharge are due and payable immediately.”

13 33. Pursuant to Labor Code section 202,

14 “[i]f an employee not having a written contract for a definite period quits his or her
15 employment, his or her wages shall become due and payable not later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her intention
17 to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

18 34. California Labor Code section 203 provides, in part:

19 If an employer willfully fails to pay, without abatement or reduction, in accordance with
20 Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged
21 or who quits, the wages of the employee shall continue as a penalty from the due date
22 thereof at the same rate until paid or until an action therefore is commenced; but the
23 wages shall not continue for more than 30 days. An employee who secretes or absents
24 himself or herself to avoid payment to him or her, or who refuses to receive the payment
25 when fully tendered to him or her, including any penalty then accrued under this section,
26 is not entitled to any benefit under this section for the time during which he or she so
27 avoids payment.

28 35. California Labor Code section 204 provides, in part:

1 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by
2 any person in any employment are due and payable twice during each calendar month, on
3 days designated in advance by the employer as the regular paydays. Labor performed
4 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between
5 the 16th and the 26th day of the month during which the labor was performed, and labor
6 performed between the 16th and the last day, inclusive, of any calendar month, shall be
7 paid for between the 1st and 10th day of the following month.

8 36. Defendants failed to pay the earned and unpaid wages of Plaintiff within 30 days from
9 the time such wages should have been paid under Labor Code sections 201, 202, 203.

10 37. Defendants failed to pay timely wages in accordance with Labor Code section 204.
11 Accordingly, Plaintiff is entitled to recover and seek waiting-time penalties under Labor
12 Code section 203 in an amount equal to 30 times the daily wage of Plaintiff Contreras , as
13 well as waiting-time penalties under the applicable wage order.

14 38. Plaintiff seeks all damages, penalties, interest, costs, and attorneys' fees permitted by
15 law.

16
17 **FIFTH CAUSE OF ACTION**

18 Negligence and Negligence Per Se

19 (Plaintiff against all defendants)

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21 39. All preceding paragraphs are incorporated hereunder.

22 40. Defendants owed Plaintiff Contreras statutory duties described herein. Defendants
23 breached those their duties for twenty-six years, from 1994 to January 2020. As a result,
24 Contreras was harmed and damaged. Defendants' unlawful conduct was a substantial
25 factor in causing Contreras harm.

26 41. Additionally, Contreras' sustained physical injuries, pain and suffering, mental anguish
27 on the job and brings this action under Labor Code section 3706 which states, "If any
28 employer fails to secure the payment of compensation, any injured employee or his

1 dependents may bring an action at law against such employer for damages, as if this
2 division did not apply.”

3 42. In the interests of equity, exceptions to and modifications of to the standard statute of
4 limitation rule may alter either the initial accrual of a claim, the subsequent running of the
5 limitations period, or both. The continuing violation doctrine aggregates a series of
6 wrongs or injuries for purposes of the statute of limitations, treating the limitations period
7 as accruing for all of them upon commission or sufferance of the last of them. Under the
8 theory of continuous accrual, a series of wrongs or injuries may be viewed as each
9 triggering its own limitations period, such that a suit for relief may be partially time-
10 barred as to older events but timely as to those within the applicable limitations period.

11
12 **SIXTH CAUSE OF ACTION**

13 Violation of Business and Professions Code §17200 et. seq.

14 (Plaintiff against all defendants)

15
16 43. All preceding paragraphs are incorporated hereunder.

17 44. Business and Professions Code §17200 states, “As used in this chapter, unfair
18 competition shall mean and include any unlawful, unfair or fraudulent business act or
19 practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by
20 Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and
21 Professions Code.”

22 45. Based upon the laws and facts alleged herein, defendants violated Business and
23 Professions Code §17200.

24 46. In the interests of equity, exceptions to and modifications of to the standard statute of
25 limitation rule may alter either the initial accrual of a claim, the subsequent running of the
26 limitations period, or both. The continuing violation doctrine aggregates a series of
27 wrongs or injuries for purposes of the statute of limitations, treating the limitations period
28 as accruing for all of them upon commission or sufferance of the last of them. Under the

1 theory of continuous accrual, a series of wrongs or injuries may be viewed as each
2 triggering its own limitations period, such that a suit for relief may be partially time-
3 barred as to older events but timely as to those within the applicable limitations period.

4 47. The "continuing violations" doctrine aggregates a series of wrongs or injuries for
5 purposes of the statute of limitations, treating the limitations period as accruing for all of
6 them upon commission or sufferance of the last of them. Plaintiff Contreras is entitled to
7 restitution from all defendants from 1994 to January 2020.

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9
10 **PRAYER**

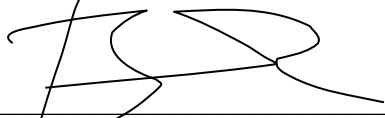
11
12 48. All preceding paragraphs are incorporated hereunder. Plaintiff prays for judgment
13 against Defendants as follows:

- 14 a. General damages according to proof;
15 b. Special damages according to proof;
16 c. For compensatory damages available under the Labor Code and/or the California
17 Code of Regulations according to proof at trial;
18 d. Unpaid wages and compensation, and statutory penalties, according to proof;
19 e. For disgorgement of all monies which Defendant has illegally gained;
20 f. Liquidated damages under Labor Code section 1194.3;
21 g. For reasonable attorneys' fees and costs, inter alia, Labor Code sections 218.5, 226,
22 1194, 2699 and 2802, and California Code of Civil Procedure section 1021.5.
23 h. Waiting-time penalties pursuant to Labor Code Section 203;
24 i. Restitution;
25 j. For pre-judgment interest;
26 k. Disgorgement;
27 l. For costs of suit;

1 m. For such other and further relief as this Court may deem just and proper.
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3 Dated: February 19, 2020
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Respectfully submitted,
NAKASE LAW CORPORATION

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6 By: 
7 Brad Nakase, Esq., Attorney for
8 Plaintiff Teodoro Contreras
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