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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE COUNTY

LINO ALTAMIRANO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE NURSERY, LLC, a California limited
liability company; SOUTHWINDS POTTERY,
LLC, a California limited liability company;
SOUTHWINDS LANDSCAPING L.P., a
California limited partnership; and DOES 1
through 100,

Defendants.

Case No.: 30-2020-01126990-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) OVERTIME WAGE VIOLATIONS
(LABOR CODE §§ 204, 510, 558,
1194, 1198);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENDITURES (LABOR
CODE §§ 2802, 2804);**
- (5) WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*).**

CX-101

**(8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Lino Altamirano (“Plaintiff”) on behalf of himself and all others similarly situated, hereby
2 brings this First Amended Class and Representative Action Complaint (Complaint) against
3 Defendants The Nursery LLC, a California limited liability company; Southwinds Pottery, LLC,
4 a California limited liability company; Southwinds Landscaping L.P., a California limited
5 partnership; and DOES 1 to 100 (collectively “Defendants”), inclusive, and on information and
6 belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
9 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203, 204,
10 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2802, 2804, and 2698 et seq., and Business and
11 Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare
12 Commission Wage Order 14-2001 (“Wage Order 14”), in addition to seeking declaratory relief
13 and restitution. This action is brought pursuant to California Code of Civil Procedure § 382.
14 This Court has jurisdiction over Defendants’ violations of the California Labor Code because
15 the amount in controversy exceeds this Court's jurisdictional minimum.

16 **VENUE**

17 2. Venue as to each Defendant is proper in this judicial district pursuant to California
18 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
19 complained of herein occurred in Orange County. Defendants own, maintain offices, transact
20 business, have an agent or agents within the County of Orange, and/or otherwise are found within
21 the County of Orange, and Defendants are within the jurisdiction of this Court for purposes of
22 service of process.

23 **PARTIES**

24 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
25 Plaintiff was and currently is, a California resident. During the four years immediately preceding
26 the filing of this action and within the statute of limitations periods applicable to each cause of
27 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee in Orange
28 County. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of

herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2802, 2804, and 2698 et seq., California's Unfair Competition Law, and Wage Order 14, which sets employment standards for the agricultural industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing this action and continuing to the present, Defendants did (and continue to do) business within the County of Orange and the State of California by operating a garden nursery, and therefore, were (and are) doing business in the County of Orange and the State of California.

5. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

6. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants, and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

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2 8. At all times mentioned herein, Defendants, and each of them, were members of
3 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
4 and scope of and in pursuance of said joint venture, partnership, and common enterprise.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff worked for Defendants as a non-exempt employee from approximately
7 2004 to 2011, then again from 2012 to approximately September 25, 2019. Plaintiff's job duties
8 primarily consisted of watering grass, and pruning and cleaning plants at the nursery. Defendants
9 did not board or lodge Plaintiff throughout his employment.

10 10. Throughout Plaintiff's employment, Plaintiff routinely worked over 10 hours per
11 workday, but did not receive *any* overtime compensation, regardless of how many hours he
12 worked. Instead, Defendants paid Plaintiff at his base rate of pay for all hours worked, including
13 overtime hours, thereby depriving Plaintiff of all overtime compensation owed.

14 11. Defendants also failed to provide Plaintiff with timely 30-minute meal periods
15 commencing before the end of the fifth hour of work, as well as second meal periods for shifts in
16 excess of 10 hours, as required by California law. Specifically, Defendants maintained an
17 unlawful meal period policy/practice that combined two 15-minute rest periods plus a 30-minute
18 meal period, into a purported 1-hour total meal period that commenced at 12:00 p.m., regardless
19 of what time Plaintiff's shift started, resulting in untimely meal periods that did not commence
20 prior to the end of the fifth hour of work. *See* Labor Code § 512, Wage Order 14 § 11.
21 Furthermore, Defendants did not provide Plaintiff with second meal periods whenever he worked
22 shifts in excess of 10 hours in a workday, which was common for Plaintiff. Defendants also failed
23 to record meal periods and instead utilized a timekeeping system, which upon information and
24 belief, auto-deducted 30-minute meal periods from Plaintiff's daily timekeeping records. Despite
25 Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal
26 periods to which they were entitled, Defendants failed to provide Plaintiff and other non-exempt
27 employees with an additional hour of premium pay for each workday in which a meal period
28 violation occurred, as required by Labor Code § 226.7.

1 12. Plaintiff was also not authorized and permitted to take a rest period for every 4
2 hours worked (or major fraction thereof) due to Defendants' unlawful rest period
3 policies/practices. As discussed above, Plaintiff was not authorized and permitted to take separate
4 rest periods throughout the workday and was only authorized and permitted a 30-minute rest
5 period combined with his 30-minute meal period, in violation of California law. *See Rodriguez v.*
6 *E.M.E., Inc.* (2016) 246 Cal.App.4th 1027 (holding that in the context of an 8-hour shift with a
7 single meal period, the preferred schedule requires the provision of a rest period in the middle of
8 each "work period" before and after the meal break, and that "a departure from the preferred
9 schedule is permissible only when the departure (1) will not unduly affect employee welfare and
10 (2) is tailored to alleviate a material burden that would be imposed on the employer by
11 implementing the preferred schedule."). Furthermore, when Plaintiff worked shifts in excess of
12 10 hours, Plaintiff was also not authorized and permitted to take a third rest period. Despite
13 Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to take all
14 legally-compliant rest periods, Defendants failed to provide Plaintiff and other non-exempt
15 employees with an additional hour of premium pay for each workday in which a rest period
16 violation occurred, as required by Labor Code § 226.7.

18 13. Additionally, Defendants required Plaintiff to utilize his personal cell phone for
19 work purposes throughout his employment. Specifically, supervisors called Plaintiff on his
20 personal cell phone every day to communicate work-related instructions and directions. Despite
21 this, Defendants failed to pay Plaintiff and other non-exempt employees for all necessary business
22 expenses associated with using their personal cell phones, in violation of Labor Code § 2802.

23 14. As a result of Defendants' failure to pay all overtime wages owed, and meal and
24 rest period premium wages owed, Defendants maintained inaccurate payroll records, and failed
25 to issue accurate itemized wage statements. Defendants also issued facially deficient wage
26 statements that failed to include: (i) all deductions, (ii) the last four digits of the employee's social
27 security number or an employee identification number other than a social security number, and
28 (iii) the full address of the legal entity that is the employer. Defendants also failed to timely pay

1 Plaintiff and other non-exempt employees all wages owed at the time of their respective
2 separations from employment.

3 **CLASS ACTION ALLEGATIONS**

4 15. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
5 following Classes pursuant to § 382 of the Code of Civil Procedure:

6 a. The Overtime Wage Class consists of all of Defendants' current and
7 former non-exempt employees in California who worked overtime hours (as defined in
8 Section 3 of Wage Order 14) during the four years immediately preceding the filing of
9 the Complaint through the present.

10 b. The Meal Period Class consists of all of Defendants' current and former
11 non-exempt employees in California who: (i) worked at least one shift in excess of 5
12 hours without a meal period of at least 30 minutes in duration commencing prior to the
13 conclusion of the fifth hour of work, during the four years immediately preceding the
14 filing of the Complaint through the present; and/or (ii) worked at least one shift in excess
15 of 10 hours without a second meal period of at least 30 minutes in duration commencing
16 prior to the conclusion of the tenth hour, during the four years immediately preceding the
17 filing of the Complaint through the present.

18 c. The Rest Period Class consists of all of Defendants' current and former
19 non-exempt employees in California who worked at least one shift in excess of 3.5 hours,
20 during the four years immediately preceding the filing of the Complaint through the
21 present.

22 d. The Reimbursement Class consists of all of Defendants' current and
23 former non-exempt employees in California who were not reimbursed for necessary
24 business expenses incurred, during the four years immediately preceding the filing of this
25 action through the present.

26 e. The Wage Statement Class consists of all of Defendants' current and
27 former non-exempt employees in California who received a wage statement during the
28 one year immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of all formerly employed members of the Overtime Wage Class and/or Meal Period Class and/or Rest Period Class who separated their employment from Defendants within the three years immediately preceding the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

17. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

iv. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;

v. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804;

vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

vii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' overtime pay policies/practices, meal and rest period policies/practices, reimbursement policies/practices, and wage statement policies/practice. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt piece-rate employee in California during the statutes of limitation periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime wages earned, was not provided timely meal periods, was not authorized and permitted to take all required rest periods, was not reimbursed for his necessary business expenses incurred, was furnished with inaccurate and incomplete wage statements, and was not timely paid all earned wages at the time of his separation.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment. The nature of this action and the format of laws available to Plaintiff
3 and members of the Classes make the class action format a particularly efficient and appropriate
4 procedure to redress the violations alleged herein. If each employee was required to file an
5 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
6 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
7 their vastly superior financial and legal resources. Moreover, requiring each member of the
8 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims
9 by employees who would be disinclined to file an action against their former and/or current
10 employer for real and justifiable fear of retaliation and permanent damages to their careers at
11 subsequent employment. Further, the prosecution of separate actions by the individual class
12 members, even if possible, would create a substantial risk of inconsistent or varying verdicts or
13 adjudications with respect to the individual class members against Defendants herein; and which
14 would establish potentially incompatible standards of conduct for Defendants; and/or legal
15 determinations with respect to individual class members which would, as a practical matter, be
16 dispositive of the interest of the other class members not parties to adjudications or which would
17 substantially impair or impede the ability of the class members to protect their interests. Further,
18 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
19 individual prosecution considering all of the concomitant costs and expenses attending thereto.
20 As such, the Classes (as defined herein) are maintainable under § 382 of the Code of Civil
21 Procedure.

22 **FIRST CAUSE OF ACTION**
23 **OVERTIME WAGE VIOLATIONS**
24 **(AGAINST ALL DEFENDANTS)**

25 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 23. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
27 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
28 overtime hours worked and provide a private right of action for the failure to pay all overtime

1 compensation for overtime work performed.

2 24. At all times relevant herein, Defendants were required to properly pay Plaintiff
3 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
4 Code § 1194 and Wage Order 14.

5 25. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
6 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
7 Class at one and one-half times their regular rate of pay for such hours.

8 26. The foregoing policies and practices are unlawful and create entitlement to
9 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
10 premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and
11 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
12 14, and Code of Civil Procedure § 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed in their affirmative obligation to provide all of their non-exempt employees in California,
19 including Plaintiff and members of the Meal Period Class, with all legally compliant meal
20 periods in accordance with the mandates of the California Labor Code and Wage Order 14, § 11,
21 for the reasons set forth in the factual allegations and class definitions sections of this Complaint.
22 Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to
23 Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in
24 accordance with California Labor Code §§ 226.7 and 512.

25 29. As a result, Defendants are responsible for paying premium compensation for
26 meal period violations, including interest thereon, statutory penalties, civil penalties, and costs
27 of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Code of Civil
28 Procedure § 1021.5.

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. Wage Order 14, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

32. As alleged herein, and due to Defendants' unlawful rest period policies and/or practices, Defendants did not accurately compensate Plaintiff and members of the Rest Period Class for all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation, as required by California Labor Code § 226.7.

33. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.2, 226.7, 516, and 558, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION
FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer."

36. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive

1 the benefits of this article or any part thereof, is null and void, and this article shall not deprive
2 any employee or his personal representative of any right or remedy to which he is entitled under
3 the laws of this State.”

4 37. As alleged herein, due to Defendants’ unlawful reimbursement practices,
5 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
6 necessary business expenses incurred, including, among other things, personal cell phone usage.

7 38. As a proximate result of Defendants’ policies and/or practices in violation of
8 Labor Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled
9 to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according
10 to proof at trial, pursuant to Labor Code § 2802.

11 **FIFTH CAUSE OF ACTION**

12 **WAGE STATEMENT PENALTIES**

13 **(AGAINST ALL DEFENDANTS)**

14 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 40. Plaintiff is informed and believes, and based thereon allege, that Defendants
16 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
17 and the Wage Statement Class with accurate and complete itemized wage statements that
18 included, among other requirements, all overtime wages earned, all meal and rest period
19 premium wages owed, all deductions, the last four digits of the employee’s social security
20 number or an employee identification number other than a social security number, and/or the full
21 address of the legal entity that is the employer, in violation of Labor Code § 226.

22 41. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class
23 with complete and accurate itemized wage statements resulted in actual injury, as said failures
24 led to, among other things, the non-payment of all wages owed, and deprived them of the
25 information necessary to identify the discrepancies in Defendants’ reported data.

26 42. Defendants’ failures create an entitlement to recovery by Plaintiff and members
27 of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
28 Code § 226 et. seq., including statutory penalties, civil penalties, reasonable attorneys’ fees, and

costs of suit according to California Labor Code § 226 *et. seq.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

46. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Defendants have engaged and continue to engage in unfair and/or unlawful

1 business practices in California in violation of California Business and Professions Code § 17200
2 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all overtime wages owed;
3 failing to pay all required meal and rest period premium wages owed; failing to reimburse for all
4 necessary business expenses incurred; knowingly failing to furnish complete and accurate,
5 itemized wage statements; and failing to pay all final wages at the time of separation from
6 employment.

7 49. Defendants' utilization of these unfair and/or unlawful business practices
8 deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which
9 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
10 advantage over Defendants' competitors who have been and/or are currently employing workers
11 and attempting to do so in honest compliance with applicable wage and hour laws.

12 50. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
13 alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full
14 restitution of monies as necessary and according to proof, to restore any and all monies withheld,
15 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
16 and 17208.

17 51. The acts complained of herein occurred within the four years immediately
18 preceding the filing of the Complaint in this action.

19 52. Plaintiff was compelled to retain the services of counsel to file this court action
20 to protect his interests and those of the Classes, to obtain restitution and injunctive relief on
21 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
22 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and
23 costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

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EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

53. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

54. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff as an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

b. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees’ respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;

c. Failing to authorize and permit Plaintiff and other aggrieved employees to

1 take all lawful rest periods and failing to pay rest period premiums to Plaintiff
2 and other aggrieved employees at the employees' respective regular rates of
3 compensation for rest period violations in violation of Labor Code §§ 226.7,
4 516, 558, and 1198;

- 5 d. Failing to reimburse Plaintiff and other aggrieved employees for all
6 necessary expenditures incurred in violation Labor Code §§ 2802 and 2804;
- 7 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
8 complete itemized wage statements in violation of Labor Code § 226, *et seq.*;
- 9 f. Failing to timely pay Plaintiff and other aggrieved employees all final wages
10 due upon their respective separations from employment in violation of Labor
11 Code §§ 201-203;
- 12 g. Failing to pay Plaintiff and other aggrieved employees all earned wages at
13 least twice during each calendar month in violation of Labor Code § 204; and
- 14 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
15 employees in violation of Labor Code §§ 558, 1174 and 1198.

16 55. On or around January 29, 2020, Plaintiff notified Defendants via certified mail,
17 and notified the California Labor and Workforce Development Agency ("LWDA") via its
18 website, of Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a
19 claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations
20 of the California Labor Code identified in Paragraph 54 (a)-(h). Now that sixty-five days have
21 passed from Plaintiffs notifying Defendants and the LWDA of these violations, and the LWDA
22 has not provided notice that it intends to investigate the violations, Plaintiffs have exhausted their
23 administrative requirements for bringing a claim under the Private Attorneys General Act with
24 respect to these violations.

25 56. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
26 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
27 exempt employees who worked for Defendants in California between January 29, 2019 and the
28

1 present.

2 57. Plaintiff was compelled to retain the services of counsel to file this court action
3 to protect his interests and the interests of other aggrieved employees, and to assess and collect
4 the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs,
5 which he is entitled to recover under California Labor Code § 2699.

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose
8 behalf this suit is brought against Defendants, as follows:

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as representative of the Classes;
- 11 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 12 4. Upon the First Cause of Action, for compensatory, consequential, general and
13 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 14 5. Upon the Second Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 16 6. Upon the Third Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;
- 18 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 20 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
21 226 *et. seq.*;
- 22 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
23 Labor Code §§ 201-203
- 24 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
25 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts
26 or practices declared by this Court to be in violation of California Business and Professions Code
27 § 17200 *et seq.*;
- 28 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other

aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections identified in Paragraph 54 (a)-(h) above;

12. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, 2802, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

14. For such other and further relief, the Court may deem just and proper.

Dated: April 7, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt

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Dated: April 7, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorney for Plaintiff