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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

WILMER BERNAL, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HORIZON LIGHTING, INC., a California
corporation; and DOES 1 through 100,

Defendants.

CASE NO. 30-2020-01125687-CU-OE-CXC

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

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198, 1815);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (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.*); and**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et*
seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Wilmer Bernal (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Horizon Lighting, Inc., a California corporation, and DOES 1
4 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.* (the “Unfair Competition Law”), Labor Code §§ 201-204, 226 *et seq.*,
9 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698, *et seq.* and Industrial Welfare
10 Commission Wage Order 16 (“Wage Order 16”), in addition to seeking injunctive relief,
11 declaratory relief, and restitution. This Complaint is brought pursuant to California Code of Civil
12 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
13 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times,
22 Plaintiff was, and is, a California resident. During the four years immediately preceding the filing
23 of this action and within the statute of limitations periods applicable to each cause of action pled
24 herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was a victim
25 of Defendants’ policies and/or practices complained of herein, lost money and/or property, and
26 has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510,
27 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698, *et seq.* the Unfair Competition Law, and
28 Wage Order 16, which sets employment standards for the construction industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this action and continuing to the present, Defendants did (and
3 continue to do) business providing various lighting maintenance, installation, and repair services,
4 and employed (and continue to employ) Plaintiff and other, similarly-situated non-exempt
5 employees within Orange County and the State of California and, therefore, were (and are) doing
6 business in Orange County and the State of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
11 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined in Paragraph 18) to be subject to the
14 unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes.

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10. During Plaintiff's employment with Defendants, Plaintiff worked over 8.0 hours per workday and/or more than 40.0 hours per workweek without receiving overtime compensation equal to one and one-half times his regular rate of pay for working overtime hours. Specifically, Defendants required Plaintiff and other non-exempt employees to work four 10-hour shifts per workweek, but compensated Plaintiff and other non-exempt employees at their base hourly rates for all hours worked up to 10.0 hours, and 1.50 times their base hourly rates for hours worked in excess of 10.0 hours (i.e., a 4/10 workweek), pursuant to a purported alternative workweek schedule ("AWS"). However, Defendants' purported AWS is invalid because upon information and belief, the number of employees who were employed for at least 30 days in the work unit that adopted the AWS increased by more than 50 percent above the number of employees who voted to adopt the AWS, and Defendants failed to conduct a new election as required by Wage Order 16, § 3(C)(6). Upon information and belief, Plaintiff alleges that approximately 12 individuals voted to adopt the AWS while the number of employees who were employed for at least 30 days in the work unit that adopted the AWS during at least a portion of the relevant time period exceeds 50 individuals. In addition, during Plaintiff's employment, Plaintiff and other non-exempt employees worked certain jobs which entitled them to a prevailing wage. However, when Plaintiff worked a job that entitled him to the prevailing wage and worked over 8.0 hours per workday and/or more than 40.0 hours per workweek, Defendants failed to pay Plaintiff overtime compensation equal to one and one-half times the prevailing wage.

11. During Plaintiff's employment with Defendants, Defendants required non-exempt employees to clock in for the beginning of their shift at Defendants' shop to which they were assigned (in Plaintiff's case, at Defendants' shop in Irvine) to pick up their equipment and routes, and then head out to their first assigned job site of the workday.

1 12. During Plaintiff's employment with Defendants, Defendants' policy and practice
2 failed to compensate non-exempt employees for all time spent traveling from the non-exempt
3 employees' final job site, resulting in unpaid minimum wages and/or unpaid overtime wages.
4 Specifically, if an employee's final job site was located in a different county than the employee's
5 county of residence, Defendants' policy and practice required the employee to clock out for the
6 end of their shift once the employee reached the county line of the county where the employee's
7 residence was located. This resulted in the employee not being compensated for any time spent
8 traveling from the county line to the employee's residence. For example, if Plaintiff's last job
9 site was located in Orange County, Plaintiff was required to clock out for the end of his shift once
10 he reached the county line for Los Angeles County, where Plaintiff resided. Moreover, if an
11 employee's final job site was located in the same county as the employee's county of residence,
12 Defendants' policy and practice required the employee to clock out for the end of their shift before
13 leaving the final job site, no matter how far the final job site was from the employee's residence,
14 which resulted in the employee not being compensated for any time spent traveling from the final
15 jobsite at the end of the workday. For example, if Plaintiff's last job site of the day was in Los
16 Angeles County, Plaintiff would be required to clock out before leaving his last job site and then
17 drive up to two hours to his residence, without being compensated for any of travel time, since
18 Plaintiff's home was located in the same county as his last job site. These policies/practices
19 resulted in Defendant's failure to pay Plaintiff and other non-exempt employees at least the
20 minimum wage for all hours worked, as well as overtime wages when employees worked over 8
21 hours in a workday and/or over 40 hours in a workweek.

22 13. In addition to failing to pay for all overtime hours, Defendants also failed to pay
23 double-time for all hours worked over 12 in a workday as required under California law.
24 Specifically, Defendants' written overtime policy only provided for double-time pay when
25 employees worked over 14 hours in a workday, rather than over 12 hours in a workday as required
26 under California law.

27 14. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt
28 employees were not authorized and permitted to take all required and legally-compliant rest

1 periods due to Defendants' rest period policies/practices. Specifically, Defendants failed to
2 schedule rest periods, and in practice, Plaintiff and other non-exempt employees were not always
3 able to take all legally compliant rest periods of at least a net ten minutes due to the nature of their
4 work. For example, Plaintiff was often required to travel to, and perform work at, multiple
5 jobsites during a workday in a back-to-back fashion, and as a result had to work periods greater
6 than 4 hours without a paid break of at least a net 10 minutes. On those occasions when Plaintiff
7 was not provided with all legally-required and compliant rest periods to which he was entitled,
8 Defendants failed to compensate Plaintiff with the required rest period premium for each workday
9 in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon
10 information and belief, during at least a portion of the putative class period, Defendants
11 maintained no payroll code or other mechanism for paying rest period premiums under Labor
12 Code § 226.7.

13 15. During Plaintiff's employment, Plaintiff and non-exempt employees were not
14 provided all legally required meal periods due to Defendants' meal period policies/practices.
15 Specifically, Defendants failed to schedule meal periods, and Defendants often failed to provide
16 a legally compliant meal period of at least 30-minutes commencing before the conclusion of the
17 fifth hour of work, as a result of the workload and pressure to get the job done. For example,
18 Plaintiff was often required to travel to, and perform work at, multiple jobsites during a workday
19 in a back-to-back fashion, and as a result the volume of job duties often prevented him from taking
20 timely, 30-minute meal periods. Although Plaintiff and other non-exempt employees were not
21 provided with all legally required meal periods, Plaintiff and other non-exempt employees were
22 required to clock out for their meal period before the end of the fifth hour of their shift on their
23 cellphones for a meal period in order to avoid disciplinary action. In addition, Defendants failed
24 to provide Plaintiff or other non-exempt employees with second meal periods on shifts over 10.0
25 hours. On those occasions when Plaintiff was not provided with all legally-required and compliant
26 meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required
27 meal period premium for each workday in which he experienced a meal period violation as
28 mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the

putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums under Labor Code § 226.7.

16. As a result of Defendants' failure to pay all overtime and minimum wages, failure to provide all required meal periods, and failure to authorize and permit all required rest periods, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

17. As a result of Defendants' failure to pay all overtime and minimum wages, as well as meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment from Defendants.

CLASS ACTION ALLEGATIONS

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

a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight hours in a workday and/or more than 40 hours in a workweek and: (i) were not paid one and a half times their regular rate of pay for all daily hours worked in excess of 8.0; and/or (ii) worked over 12.0 hours in a workday but were not paid double-time for all time worked over 12.0 hours; and/or (iii) were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class and/or Rest Period Class during the one year immediately preceding the filing of this action through the present.

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

19. **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 members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **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 required members of the Overtime Class to perform work pursuant to an invalid alternative workweek schedule;

ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to §§ 510, 1194, and 1815, by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

iii. Whether Plaintiff and members of the Minimum Wage Class were compensated for all hours actually worked;

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- 1 iv. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 v. Whether Defendants authorized and permitted all legally compliant rest periods to
4 members of the Rest Period Class;
- 5 vi. Whether Defendants provided meal or rest period premium payments for non-
6 compliant meal and/or rest periods;
- 7 vii. Whether Defendants furnished legally compliant wage statements to members of
8 the Wage Statement Class pursuant to Labor Code § 226; and
- 9 viii. Whether Defendants’ policies and/or practices for the timing and amount of
10 payment of final wages to members of the Waiting Time Class at the time of
11 separation were lawful.

12 21. **Predominance of Common Questions:** Common questions of law and fact
13 predominate over questions that affect only individual members of the Classes. The common
14 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
15 and/or practices applicable to each individual class member, including but not limited to
16 Defendants’ uniform policies and/or practices dealing with overtime payment, minimum wage
17 payment, meal periods, rest periods, and/or timekeeping. As such, the common questions
18 predominate over individual questions concerning each individual class member’s showing as to
19 their eligibility for recovery or as to the amount of their damages.

20 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
21 Plaintiff was employed by Defendants as a non-exempt employee in California during the
22 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
23 herein, Plaintiff, like the members of the Classes, was not paid overtime and minimum wages for
24 all hours worked, was not provided all required meal periods, was not authorized and permitted
25 to take all required rest periods, did not receive meal and rest period premium wages for missed
26 or non-compliant meal and rest periods, was not provided with accurate, itemized wage
27 statements, and was not paid all wages owing at termination of employment.

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

7 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 the claims of the individual members of the Class are not sufficiently large to warrant vigorous

individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

26. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, 1198, and 1815, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked, including on public works projects, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

27. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in a workweek unless a valid alternative workweek schedule is elected pursuant to Wage Order 16, Section 3(B)-(C). Defendants caused Plaintiff to work overtime and hours, but did not credit Plaintiff or members of the Overtime Pay Class with all overtime hours actually worked, and did not compensate Plaintiff or members of the Overtime Pay Class at one and one-half times their regular rates of pay for such hours.

28. Similarly, Defendants employed Plaintiff and other members of the Overtime Class on public works projects, and required them to work over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but failed to pay them overtime in violation of Labor Code § 1815, which provides that employees on public works projects be paid overtime for such hours.

29. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of

overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

31. Wage Order 16, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid at least the minimum wage for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to Defendants' control and/or suffered or permitted to work, under the Labor Code and Wage Order 16.

32. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

33. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the members of the Minimum Wage Class have sustained economic damages, including but not limited to unpaid wages and interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 16.

34. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and

members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit, per Labor Code §§ 204, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

37. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 16, including interest thereon Civil Code §§ 3287(b) and 3289, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

39. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

40. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

41. The foregoing violations create an entitlement to recovery by Plaintiff and members of 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 pursuant to Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements with respect to their actual regular hours worked, total gross wages earned, all rates of pay, and total net wages earned, in violation of Labor Code § 226 *et seq.*

44. Defendants' failures in furnishing Plaintiff and Wage Statement Class members with complete and accurate itemized wage statements resulted in injury, as said failures deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

45. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor 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)

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

47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or 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.

1 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their termination, including, among other things, overtime and minimum wages, meal period
4 premium wages, and rest period premium wages.

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

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

19 52. Defendants have engaged and continue to engage in unfair and/or unlawful
20 business practices in California in violation of California Business and Professions Code § 17200
21 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
22 periods and authorize and permit all required rest periods, or pay premium payments for missed
23 or non-compliant meal and rest periods, failing to issue accurate and itemized wage statements,
24 and failing to pay all final wages owed to employees upon their separation from employment with
25 Defendants.

26 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
27 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
28 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage

over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

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

55. The acts complained of herein occurred within the last four years immediately preceding the filing of this action.

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

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

57. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

58. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* ("PAGA"), acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the 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 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 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 of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 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 compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, 1198, and 1815;
- b. Failing to compensate Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197 and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by aggrieved employees at the time of separation in violation of Labor Code §§ 201- 203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

59. On or around January 24, 2020 Plaintiff notified Defendant Horizon Lighting, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring

1 a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations
2 of the California Labor Code identified herein. Now that sixty-five days have passed from
3 Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his
4 administrative requirements for bringing a claim under the Private Attorneys General Act with
5 respect to these violations.

6 60. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect his interests and the interests of other similarly aggrieved employees, and to assess and
8 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
9 costs, which she is entitled to recover under California Labor Code § 2699(g).

10 **PRAYER**

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

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 16 4. Upon the First Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, 1198, and 1815;
- 18 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
19 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2
20 1197, and 1198;
- 21 6. Upon the Third Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 23 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 25 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
26 226;
- 27 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
28 Labor Code §§ 201-203;

1 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
2 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
3 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
4 *seq.*;

5 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
6 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
7 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each
8 failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
9 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
10 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
11 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
12 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
13 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
14 violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay period;
15 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
16 employee per pay period for those violations of the Labor Code for which no civil penalty is
17 specifically provided, based on the violations of Labor Code sections cited in Paragraph 58 (a)-
18 (h);

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

21 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 §§ 226, 1194 *et seq.*, 2699(g), and Code of Civil Procedure § 1021.5; and

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

24
25 Dated: March 30, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By:



Paul K. Haines
Attorneys for Plaintiff

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Dated: March 30, 2020

By:

Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Wilmer Bernal v. Horizon Lighting, Inc.

Orange County Superior Court Case No. 30-2020-01125687-CU-OE-CXC

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 222 N. Sepulveda Blvd., Suite 1550, El Segundo, California 90245.

On April 08, 2020, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Thomas W. Kovacich, Esq.
Brian M. Wheeler, Esq.
Atkinson, Andelson, Loya, Ruud & Romo
A Professional Law Corporation
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364
Attorneys for Defendant *HORIZON LIGHTING, INC.*

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 08, 2020 at El Segundo, California.



Andy Lidman