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

MANUEL CHAVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TROPICAL PLAZA NURSERY, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No.: 30-2020-01122820-CU-OE-CXC

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **WAGE STATEMENT PENALTIES
(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 Manuel Chavez (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 Defendant Tropical Plaza Nursery, Inc., a California Corporation; and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief allege as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
10 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, and Industrial Welfare Commission Wage Order 16
11 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This Complaint is
12 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court's jurisdictional minimum.

15 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff is a victim of Defendants’ policies and/or practices complained of herein, lost
27 money and/or property, and have been deprived of the rights guaranteed by Labor Code §§ 201-
28 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*,

and Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 16, which sets employment standards for landscaping occupations.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by providing various irrigation, landscape, and hardscape services, and employed Plaintiff and other, similarly-situated non-exempt employees within Orange County and the State of California and, therefore, were (and are) doing business in Orange County and the State of California.

5. 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 in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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.

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants are in the business of providing various irrigation, landscape, and
5 hardscape services. Plaintiff worked for Defendants as a non-exempt employee from
6 approximately September 2017 to October 2019, in the position of Landscaper. As a Landscaper,
7 Plaintiff's primary job duties consisted of providing landscaping services for various projects
8 including, but not limited to, commercial businesses and private residences.

9 10. During Plaintiff's employment with Defendants, Plaintiff worked in excess of
10 eight (8) hours per workday and/or in excess of forty (40) hours per workweek, but did not receive
11 overtime compensation at one and one-half times his regular rate of pay for working overtime
12 hours. Specifically, Plaintiff received non-discretionary incentive pay, including bonuses and/or
13 other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter
14 the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite
15 Defendants' payment of Incentive Pay to Plaintiff, Defendants failed to properly calculate
16 Plaintiff's "regular rate" of pay, thereby causing Plaintiff to be underpaid for his required overtime
17 wages.

18 11. During Plaintiff's employment with Defendants, Defendants utilized a
19 timekeeping system which resulted in Plaintiff not being compensated for all hours actually
20 worked, whether by rounding, time-shaving, or otherwise. Specifically, Plaintiff clocked in and
21 out for his shifts by inserting a timecard into a timeclock, however Defendants only pay Plaintiff
22 and other non-exempt employees in increments of a half hour, so that over a period of time they
23 are deprived of all earned minimum wages. Further, on occasions when Plaintiff works over eight
24 (8) hours in a workday and/or forty (40) hours in a workweek, Defendants' timekeeping
25 policies/practices have deprived him of all overtime wages earned. Due to Defendants'
26 timekeeping policies/practices that fail to compensate for all hours worked, Plaintiff was not
27 compensated for all required minimum and overtime wages.

28 12. During Plaintiff's employment with Defendants, Defendants' policy and/or

1 practice was to compensate its non-exempt employees for only their scheduled hours, as opposed
2 to the hours they actually worked, which were regularly greater than their scheduled hours, due
3 to Defendants knowing and permitting, and in some cases requiring, work to be performed by
4 these employees outside of their scheduled hours without compensation. For example, during
5 Plaintiff's employment with Defendants, Plaintiff would often arrive at Defendants' yard in
6 Orange, California up to 1.5 hours before the start of his scheduled shift in order to, among other
7 things, prepare and load the truck, without being compensated for this time. As a result of these
8 policies and/or practices, Plaintiff was not compensated for all required minimum and overtime
9 wages.

10 13. Defendants' timekeeping policies/practices were also unlawful because
11 Defendants failed to record Plaintiff's and other non-exempt employees' meal periods in their
12 time records, in violation of Wage Order 16, Section 6(A)(1).

13 14. Plaintiff and other non-exempt employees were not authorized and permitted to
14 take all required and legally-compliant rest periods due to Defendants' rest period
15 policies/practices. Specifically, Plaintiff and other non-exempt employees were not always
16 authorized and permitted to take all legally compliant rest periods of at least a net ten minutes due
17 to the nature of their work. Specifically, Plaintiff was often required to perform work at various
18 jobsites during a workday in a back-to-back fashion, and as a result had to work periods greater
19 than 4 hours without a paid break of at least a net 10 minutes. On those occasions when Plaintiff
20 was not provided with all legally-required and compliant rest periods to which he was entitled,
21 Defendants failed to compensate Plaintiff with the required rest period premium for each workday
22 in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon
23 information and belief, during at least a portion of the putative class period, Defendants
24 maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

25 15. Defendants failed to provide Plaintiff and other non-exempt employees with all
26 legally compliant meal periods because they failed to provide Plaintiff and other non-exempt
27 employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before
28 the end of the fifth hour of work. Specifically, upon information and belief, Plaintiff's and other

1 non-exempt employees' meal periods were frequently "late" (i.e., starting after the completion of
2 the fifth hour of work), because Defendants' work demands frequently prevented them from
3 taking a meal period until well after the completion of the fifth hour of work. Defendants have
4 failed to compensate Plaintiff with the required meal period premium for each workday in which
5 he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information
6 and belief, during at least a portion of the liability period, Defendants maintained no payroll code
7 for paying meal period premiums under Labor Code § 226.7.

8 16. As a result of Defendants' failure to pay all overtime and minimum wages,
9 Defendants maintained inaccurate payroll records and issued inaccurate wage statements to
10 Plaintiff.

11 17. Because of the above violations, Defendants also failed to timely pay Plaintiff and
12 other non-exempt employees all wages owed at the time of their respective separations from
13 employment.

14 **CLASS ACTION ALLEGATIONS**

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

- 17 a. The Overtime Class consists of all of Defendants' current and former non-exempt
18 California employees who worked more than eight (8) hours per day and/or forty
19 (40) hours per week and: (i) received Incentive Pay during a corresponding time
20 period; and/or (ii) were subject to Defendants' timekeeping policies/practices,
21 during the four years immediately preceding the filing of the Complaint through
22 the present.
- 23 b. The Minimum Wage Class consists of all of Defendants' current and former non-
24 exempt California employees who were subject to Defendants' timekeeping
25 policies/practices, during the four years immediately preceding the filing of the
26 Complaint through the present.
- 27 c. The Rest Period Class consists of all Defendants' current and former non-exempt
28 employees in California who worked at least one shift in excess of 3.5 hours,

during the four years immediately preceding the filing of the Complaint through the present.

d. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes commencing prior to the end of the fifth hour of work, during the four years immediately preceding the filing of the Complaint through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, and/or Minimum Wage Class, who received a wage statement during the one year immediately preceding the filing of the Complaint through the present.

f. The Waiting Time Class consists of all formerly employed members of the Overtime Class, and/or Minimum Wage Class, who separated their employment from Defendants during the three years immediately preceding the filing of the Complaint 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 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:

- i. Whether Defendants failed to properly include all forms of Incentive Pay when computing the respective regular rates for members of the Overtime Class;
- ii. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;

- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants provided meal and/or rest period premium payments for non-compliant meal and/or rest periods;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful.

21. **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' uniform calculation of the regular rate of pay for overtime purposes, rest period policies/practices, and meal period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as non-exempt employees in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime and minimum wages, was not authorized and permitted to take all legally-compliant rest periods, was not provided all required meal periods, did not receive accurate, itemized wage statements, and was not paid all wages owing at the termination of employment.

23. **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.

24. **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 take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes 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, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, 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 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 eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

28. Defendants’ policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 16.

29. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

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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 California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages 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 accrued thereon. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California 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 consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 16 § 18(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

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

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

35. Wage Order 16, § 11 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

36. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required and legally-compliant rest periods, and failed to pay rest period premium wages when rest periods were not authorized and permitted.

37. 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 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

39. 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 pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

40. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 16, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

1 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and members of the Wage Statement Class with complete and accurate wage statements with
4 respect to their total gross wages earned, and total net wages earned during the pay period, in
5 violation of Labor Code § 226 *et seq.*

6 43. Defendants' failure in furnishing Plaintiff and members of the Wage Statement
7 Class with complete and accurate itemized wage statements resulted in actual injury, as said
8 failures led to, among other things, the non-payment of all earned overtime wages and deprived
9 them of the information necessary to identify the discrepancies in Defendants' reported data.

10 44. Defendants' failures create an entitlement to recovery by Plaintiff and members of
11 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
12 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
13 costs of suit according to California Labor Code § 226 *et seq.*

14 **SIXTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES**

16 **(AGAINST ALL DEFENDANTS)**

17 45. Plaintiff realleges and incorporates by reference all previous paragraphs.

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

24 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
26 at the time of their separation which include, among other things, underpaid overtime wages and
27 minimum wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
28 matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting

1 Time Class all earned wages at the end of employment in a timely manner pursuant to the
2 requirements of Labor Code §§ 201-203. Defendants' failure to pay all wages was willful within
3 the meaning of Labor Code § 203.

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

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect their 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)

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

56. 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., acting on behalf of himself and other aggrieved employees, brings 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 § 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 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 pay Plaintiff, the Overtime Class, and other aggrieved employees all

1 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
2 and 1198;

3 b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
4 Wage Class, and other aggrieved employees in violation of Labor Code §§
5 1182.12, 1194, 1194.2, 1197, and 1198;

6 c. Failing to authorize and permit all legally required rest periods, and failure to pay
7 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
8 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
9 516, and 558;

10 d. Failing to provide all legally required meal periods, and failure to pay meal period
11 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
12 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
13 512, and 558;

14 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
15 employees with complete, accurate, itemized wage statements in violation of
16 Labor Code § 226;

17 f. Failing to timely pay all final wages and compensation earned by Plaintiff, the
18 Waiting Time Class, and other aggrieved employees at the time of separation in
19 violation of Labor Code §§ 201, 202, and 203;

20 g. Failing to Plaintiff and other aggrieved employees all earned wages at least twice
21 during each calendar month in violation of Labor Code § 204; and

22 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
23 employees in violation of Labor Code § 558 and 1174.

24 57. On January 13, 2020, Plaintiff notified Defendants via certified mail, and notified
25 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
26 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
27 civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the
28 California Labor Code identified in Paragraph 56 (a)-(h). Now that sixty-five days have passed

1 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
2 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
3 administrative requirements for bringing a claim under the Private Attorneys General Act with
4 respect to these violations.

5 58. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
6 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
7 exempt employees who worked for Defendants in California between January 13, 2019, and the
8 present.

9 59. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect his interests and the interests of other aggrieved employees, and to assess and collect the
11 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
12 he is entitled to receive under California Labor Code § 2699(g).

13 **PRAYER**

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

- 16 1. For an order certifying the proposed Classes;
- 17 2. For an order appointing Plaintiff as representative of the Classes;
- 18 3. For an order appointing counsel for Plaintiff as Counsel for the Classes;
- 19 4. Upon the First Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 21 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
22 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
23 1197, and 1198;
- 24 6. Upon the Third Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 26 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 28 8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant

1 to Labor Code § 226 *et seq.*;

2 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
3 Labor Code §§ 201-203;

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

8 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
10 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
11 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
12 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
13 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
14 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
15 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
16 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
17 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
18 each initial violation and \$200 for each subsequent violation per employee per pay period for
19 those violations of the Labor Code for which no civil penalty is specifically provided, based on
20 the Labor Code violations identified in Paragraph 56 (a)-(h);

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

23 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
24 §§ 226, 1194 *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

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

26 ///

27 ///

28 ///

1 Dated: March 19, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

2
3 By:



Paul K. Haines
Attorneys for Plaintiff

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5
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

8
9 Dated: March 19, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

10
11 By:



Paul K. Haines
Attorneys for Plaintiff