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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANDRES GONZALEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CATALINA CHANNEL EXPRESS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

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Case No.: BC707664 (Related to Case No.
620021)

*[Assigned for all purposes to the Hon.
Carolyn B. Kuhl]*

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

- (1) **FAILURE TO PAY MINIMUM
WAGES (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) **WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (6) **FAILURE TO KEEP ADEQUATE
RECORDS (LABOR CODE §
1174(d));**
- (7) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*);**
- (8) **FAILURE TO REIMBURSE
EMPLOYEES FOR NECESSARY
BUSINESS EXPENDITURES
(LABOR CODE §§ 2802, 2804); and**

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Andres Gonzalez (hereinafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint (“Complaint”) against Catalina Channel Express, Inc., a California Corporation, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges 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 and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1174(d),
10 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, and Industrial Welfare
11 Commission Wage Order 9 (“Wage Order 9”), in addition to seeking declaratory relief and
12 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This
13 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
14 amount in controversy exceeds 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 Los Angeles. Defendants own, maintain offices, transact business,
19 have an agent or agents within the County of Los Angeles, and/or otherwise are found within the
20 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
21 service of process.

22 **PARTIES**

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

et seq., 226.7, 510, 512, 516, 558, 1182.12, 1174(d), 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, California Business and Professions Code § 17200 *et seq.*; and Wage Order 9, which sets employment standards for the transportation industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business by operating parking facilities, and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County and the State of California and, therefore, were (and are) doing business in Los Angeles 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 14) 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. Plaintiff

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

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants operate a fleet of high end and high-speed vessels providing
5 transportation to and from Catalina Island from Long Beach, San Pedro and Dana Point.
6 According to Defendants' website, each year, more than one million passengers set sail on board
7 the Catalina Express fleet. Plaintiff worked for Defendants as a non-exempt employee in a
8 maintenance position, until his termination in or about January 2017.

9 10. During Plaintiff's employment, Plaintiff was required to clock in and out for
10 periods of work, and although Defendants recorded Plaintiff's hours worked to the minute,
11 Defendants only paid Plaintiff in quarter of an hour increments. Defendants' rounding of time to
12 the quarter of an hour was not even-handed, and has resulted in Plaintiff and putative class
13 members not being compensated for all hours worked.

14 11. Defendants also paid Plaintiff and putative class members performance bonuses,
15 and other forms of non-discretionary pay that must be included in the regular rate of pay
16 ("Incentive Pay"). However, Defendants failed to properly calculate Plaintiff's regular rate of
17 pay for overtime purposes as a result of Plaintiff's receipt of Incentive Pay. Instead, Plaintiff was
18 paid less than one and one half times (or two times in the case of double-time hours) the legal
19 regular rate of pay for all overtime hours worked.

20 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
21 all statutorily-mandated meal periods due to Defendants' meal period policies/practices, which
22 systematically result in late (commencing after the fifth hour of work), short (less than 30
23 minutes), and missed first and second meal periods. In those instances that Defendants failed to
24 provide Plaintiff with a legally compliant meal period, Defendants never paid Plaintiff the meal
25 period premium payment required by Labor Code section 226.7. Upon information and belief,
26 Defendants maintained no mechanism for the payment of meal period premium payments as
27 required by Labor Code section 226.7, when they failed to provide Plaintiff and the putative class
28 members with legally compliant meal periods.

13. As a result of Defendants' failure to pay all overtime wages, as well as meal period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment with Defendants.

14. As a result of Defendants' failure to pay overtime wages, as well as meal period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

15. During Plaintiff's employment with Defendants' Defendants failed to reimburse Plaintiff for all reasonable and necessary work expenditures, including the use of their personal cellular phones for a variety of work activities and use of their personal vehicles in the performance of their work duties.

CLASS ACTION ALLEGATIONS

16. **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 Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who worked in a position other than Captain, Second Operator, Deckhand, or Cabin Attendant, and had their timekeeping entries rounded, during the four years immediately preceding the filing of this action through the present.

b. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked in a position other than Captain, Second Operator, Deckhand, or Cabin Attendant, and: (i) had their timekeeping entries rounded, and/or (ii) earned Incentive Pay and worked overtime hours during a corresponding time period, 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 worked in a position other than Captain, Second Operator, Deckhand, or Cabin Attendant, and who worked a shift greater than 5.0 hours, during the four years immediately preceding the filing of this action

through the present.

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

e. The Recordkeeping Class consists of all members of the Overtime Class and/or Meal or Rest Period Classes who received a wage statement during the one year immediately preceding the filing of the Complaint through the present.

f. The Wage Statement Class consists of: (i) all members of the Overtime Class and/or Meal Period Class who received a wage statement, during the one year immediately preceding the filing of the Complaint through the present.

g. The Employee Expenses Class consists of all Defendants' current and former non-exempt employees in California who used their personal cellular phones and/or personal vehicles for business purposes, during the four years immediately preceding the filing of the Complaint through the present.

17. **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 is unknown to Plaintiff at this time; however, it is estimated that the members of each of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **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 authorized and permitted all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said

work according to the overtime laws of the State of California; and

iii. 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 their separation of employment were lawful.

iv. Whether Defendants kept adequate records and/or furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226 and 1174(d).

19. **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 meal and rest 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.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee 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 overtime wages, was not provided all meal periods, did not receive accurate, itemized wage statements, and did not receive all final wages owed to him upon his separation of employment with Defendants.

21. **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.

22. **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 Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

24. Wage Order 9, § 4 and Labor Code §§ 1182.12 and 1197 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.

25. At all times relevant herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to, regularly, systematically, and impermissibly failing to properly compensate Plaintiff for all hours worked at the required minimum wage.

26. Defendants' policy and practice of not paying all minimum wages violates Labor Code §§ 204, 558, 1182.12, 1194, 1197, 1198, and Wage Order 9.

27. Defendants' conduct, as alleged herein, is unlawful and creates an entitlement to recovery by Plaintiff in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to Labor Code §§ 204, 210, 558, 1194 and 1198, Wage Order 9, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

29. 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.

30. 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 9. Wage Order 9, § 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

1 in the workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the
2 employee's regular rate of pay for work in excess of twelve hours each work day and/or for work
3 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
4 caused Plaintiff to work overtime hours but did not compensate Plaintiff or members of the
5 Overtime Pay Class at one and one half times their regular rate of pay for such hours.

6 31. Defendants' policy/practice of requiring overtime work and not paying at the
7 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
8 1194, and 1198; and Wage Order 9.

9 32. The foregoing policies/practices alleged herein are unlawful and create entitlement
10 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
11 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
12 attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
13 1194, and 1198; and Code of Civil Procedure § 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **MEAL PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

18 34. Defendants failed to provide Plaintiff and members of the Meal Period Class with
19 proper meal periods in accordance with the mandates of the California Labor Code and the IWC
20 Wage Order. As such, Defendants are responsible for paying premium compensation for meal
21 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and the IWC Wage Order.

22 35. Plaintiff is informed and believes that Defendants maintained a policy and/or
23 practice of failing to pay meal period premiums at the employee's regular rate of pay, despite
24 Plaintiff not being provided with a legally compliant meal period. As a result, Plaintiff is owed
25 unpaid wages per California Labor Code §§ 204, 210 and 558 and meal period premium payments
26 per California Labor Code § 512 and 226.7, including interest thereon, statutory penalties, civil
27 penalties, reasonable attorney's fees, and costs of suit.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

11 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
13 to them at their separation from employment, including all overtime wages, and meal period
14 premium wages.

15 39. Plaintiff is informed and believes, and based thereon alleges, that as a matter of
16 uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the
17 Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
18 pursuant to the requirements of Labor Code §§ 201-203.

19 40. Defendants' failure to pay all final wages was willful within the meaning of Labor
20 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
21 Time Penalty Class their earned wages upon separation from employment results in a continued
22 payment of wages up to thirty days from the time the wages were due.

23 41. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
24 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

25 **FIFTH CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

1 43. 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, total net wages earned, meal period premium wages
5 earned, and the applicable hourly rates in effect during the pay period, in violation of Labor Code
6 § 226 et seq. Defendants' wage statements are also facially deficient as they do list the correct
7 legal entity that is the employer.

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO KEEP ADEQUATE RECORDS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 47. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
21 central location in the state or at the facilities or establishments at which employees are employed,
22 payroll records showing the hours worked daily by and the wages paid to, and the number of
23 piece-rate units earned by and any applicable piece rate paid to, employees at the respective
24 facilities or establishments. These records shall be kept in accordance with rules established for
25 this purpose by the commission, but in any case, shall be kept on file for not less than two years.

26 48. Defendants have intentionally and willfully failed to keep accurate and complete
27 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other
28 class members.

49. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the members of the Recordkeeping Class have suffered injury and damage to their statutorily-protected rights. Specifically, Plaintiff and the members of the Recordkeeping Class have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

51. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of Business and Professions Code § 17200 et seq., by failing to properly pay all minimum and overtime wages, failing provide all required meal periods, and failing to timely pay all final wages to employees upon separation of employment. The acts complained of herein occurred within the last four years immediately preceding the filing of this action.

52. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are 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.

53. 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.

54. 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

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS**

6 **EXPENDITURES**

7 **(AGAINST ALL DEFENDANTS)**

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

10 52. As alleged herein, Defendants failed to reimburse Plaintiff and members of the
11 Employee Expense Class for all reasonable and necessary business expenditures, including but
12 not limited to use of their personal cellular phones and/or personal vehicles for business-related
13 purposes.

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

18 54. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
19 states that "any contract or agreement, express or implied, made by any employee to waive the
20 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
21 employee or his personal representative of any right or remedy to which he is entitled under the
22 laws of this State."

23 55. As a proximate result of Defendants' policies and/or practices in violation of Labor
24 Code §§ 2802, 2804, and Wage Order 1-2001, § 9, Plaintiff and the members of the Employee
25 Expense Class were damaged in sums, which will be shown according to proof.

26 56. Plaintiff and members of the Employee Expense Class are entitled to attorneys'
27 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

28 57. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

1 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
2 from the date on which they incurred the necessary expenditure.

3 **NINTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(AGAINST ALL DEFENDANTS)**

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

8 59. Defendants have committed several Labor Code violations against Plaintiff,
9 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within
10 the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of himself and other
11 aggrieved employees, brings this representative action against Defendants to recover the civil
12 penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of
13 California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but
14 not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200
15 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
16 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
17 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
20 initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor
21 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200
22 for each subsequent violation per employee per pay period for those violations of the Labor Code
23 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 24 a. Failing to Compensate Plaintiff and other aggrieved employees all minimum
25 wages earned in violation of Labor Code §§ 1182.13, 1194, 1194.2, and 1197;
26 b. Failing to compensate Plaintiff and other aggrieved employees all overtime
27 wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
28

- 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, and 558;
- d. Failing to furnish Plaintiff and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses in violation of Labor Code §§ 2802 and 2804;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff, and other aggrieved employees at the time of separation of employment 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.

60. On or around February 26, 2020, Plaintiff notified Defendant 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 a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

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

PRAYER

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

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§1182.13, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;
8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
9. Upon the Sixth Cause of Action, for statutory recordkeeping penalties based upon violation of Labor Code § 1174(d);
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*;
11. Upon the Seventh Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802 and 2804;
12. 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

1 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
2 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
3 violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or
4 (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
5 pay period for those violations of the Labor Code for which no civil penalty is specifically
6 provided, based on the violations of Labor Code sections cited in Paragraph 59 (a)-(h) above.;

7 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
8 Code § 218.6 and Civil Code §§ 3287 and 3289;

9 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
10 §§226, 1194 *et seq.*, 2699, 2802(c), and Code of Civil Procedure § 1021.5; and

11 15. For such other and further relief the Court may deem just and proper.

12
13 Dated: March 26, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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15 By:


Paul K. Haines
Attorneys for Plaintiff

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17
18 **DEMAND FOR JURY TRIAL**

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

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21 Dated: March 26, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

22
23 By:


Paul K. Haines
Attorneys for Plaintiff

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

On November 13, 2020, I served the foregoing document(s) described as:

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

[X] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

Executed on November 13, 2020, at El Segundo, California.

Aaron Clark