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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLARENCE SMITH, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation; and DOES 1 through
50, inclusive,

Defendants.

PHUOC TRUONG, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation; and DOES 1 through
10, inclusive,

Defendants.

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
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Case #20CV365250
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CASE NO. 20CV365250

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

- (1) VIOLATION OF CAL. LABOR CODE § 226.7;**
- (2) VIOLATION OF CAL. LABOR CODE §§ 226.7 AND 512;**
- (3) VIOLATION OF CAL. LABOR CODE §§ 201-203;**
- (4) VIOLATION OF CAL. LABOR CODE § 226(a);**
- (5) VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *ET SEQ.***
- (6) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.* (PRIVATE ATTORNEYS GENERAL ACT)**

DEMAND EXCEEDS \$25,000.00

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8 Attorneys for Plaintiff Phuoc Truong,
the Class, and Aggrieved Employees
9

1 Plaintiffs Clarence Smith and Phuoc Truong (together, “Plaintiffs”) hereby submit this
2 First Amended Consolidated Class and Representative Action Complaint (“Complaint”) against
3 Defendant Watlow Electric Manufacturing Company (“Defendant”), and DOES 1-50
4 (collectively, “Defendants”), on behalf of themselves and all other similarly situated current and
5 former employees of Defendants for penalties and/or damages for failure to provide proper meal
6 and rest breaks, failure to timely pay all wages upon separation of employment, and failure to
7 provide accurate itemized wage statements under the California Labor Code and the California
8 Business & Professions Code, as follows:

9 **INTRODUCTION**

10 1. This class and representative action is within the Court’s jurisdiction under
11 California Labor Code §§ 201-203, 212, 226, 226.7, 512, and 2698, *et seq.*, the California Unfair
12 Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*, and the applicable
13 Wage Orders of the California Industrial Welfare Commission (“IWC”).

14 2. This Complaint challenges systemic illegal employment practices resulting in
15 violations of the California Labor Code and the UCL against individuals who worked for
16 Defendants.

17 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants
18 jointly and severally, have acted knowingly and intentionally, and with deliberate indifference
19 and conscious disregard to the rights of all employees by failing to provide proper meal and rest
20 breaks, failing to timely pay all wages owed upon separation of employment, and failing to
21 provide accurate wage statements to Plaintiffs and other employees.

22 4. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
23 engaged in, among other things a system of willful violations of the California Labor Code and
24 the UCL by creating and maintaining policies, practices, and customs that knowingly deny its
25 employees to above-stated rights and benefits.

26 5. The policies, practices and customs of Defendants described above and below have
27 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
28 routinely adhere to the strictures of the California Labor Code and the UCL.

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1 corporate, of the defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
2 said defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
3 Complaint when the true names and capacities are known. Plaintiffs are informed and believe,
4 and based thereon allege, that each of said fictitious defendants were responsible in some way for
5 the matters alleged herein and proximately caused Plaintiffs and members of the general public
6 and class to be subject to the illegal employment practices, wrongs and injuries complained of
7 herein.

8 15. At all times herein mentioned, each of said defendants participated in the doing of
9 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
10 Defendants, and each of them, were the agents, servants, and employees of each of the other
11 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
12 within the course and scope of said agency and employment.

13 16. Plaintiffs are informed and believe, and based thereon allege, that at all times
14 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
15 joint venturer of, or working in concert with each of the other co-Defendants and was acting
16 within the course and scope of such agency, employment, joint venture, or concerted activity. To
17 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
18 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
19 Defendants.

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

23 18. At all times herein mentioned, the acts and omissions of various Defendants, and
24 each of them, concurred and contributed to the various acts and omissions of each and all of the
25 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
26 herein mentioned, Defendants, and each of them, ratified each and every act or omission
27 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all of the other Defendants in proximately causing

1 the damages as herein alleged.

2 **CLASS ACTION ALLEGATIONS**

3 19. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
4 California Code of Civil Procedure § 382. Plaintiffs propose the following Class: All current and
5 former hourly-paid or non-exempt employees, who worked for Defendant in California and
6 received at least one paycheck, at any time from November 15, 2018, through the present (the
7 “Class”).

8 20. **Numerosity and Ascertainability:** The members of the Class are so numerous
9 that joinder of all members would be impractical, if not impossible. The identities of the
10 members of the Class are readily ascertainable by review of the Defendants’ records, including
11 payroll records. Plaintiffs are informed and believe, and based thereon allege, that Defendants:
12 (a) failed to provide proper rest breaks, or pay rest period premium compensation in lieu thereof,
13 in violation of Labor Code § 226.7; (b) failed to provide proper meal breaks, or pay meal period
14 premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (c) failed to
15 timely pay all wages upon separation of employment, in violation of Labor Code §§ 201-203; (d)
16 failed to provide accurate wage statements, in violation of Labor Code § 226(a); and (e) engaged
17 in unfair business practices in violation of the California Labor Code, the applicable IWC Wage
18 Orders, and the UCL.

19 21. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
20 necessary steps to represent fairly and adequately the interests of the Class defined above.
21 Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent the Class and
22 the individual Plaintiffs. Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class
23 actions in the past and currently have a number of wage-and-hour class actions pending in
24 California state and federal courts.

25 22. Defendants uniformly administered a corporate policy and practice of: (a) failing
26 to provide proper rest breaks, or pay rest period premium compensation in lieu thereof, in
27 violation of Labor Code § 226.7; (b) failing to provide proper meal breaks, or pay meal period
28 premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (c) failing to

1 timely pay all wages upon separation of employment, in violation of Labor Code §§ 201-203; (d)
2 failing to provide accurate wage statements, in violation of Labor Code § 226(a); and (e)
3 engaging in unfair business practices in violation of the California Labor Code, the applicable
4 IWC Wage Orders, and the UCL.

5 23. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
7 concerning the Defendants' policy and practice of: (a) failing to provide proper rest breaks, or
8 pay rest period premium compensation in lieu thereof, in violation of Labor Code § 226.7; (b)
9 failing to provide proper meal breaks, or pay meal period premium compensation in lieu thereof,
10 in violation of Labor Code §§ 226.7 and 512; (c) failing to timely pay all wages upon separation
11 of employment, in violation of Labor Code §§ 201-203; (d) failing to provide accurate wage
12 statements, in violation of Labor Code § 226(a); and (e) engaging in unfair business practices in
13 violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

14 24. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the
15 Class in that Plaintiffs have suffered the harm alleged in this Complaint in a similar and typical
16 manner as the Class Members. As with other Class Members, Plaintiffs were regularly denied a
17 10-minute rest period for every four (4) hours of worked or major fraction thereof. Plaintiffs were
18 also regularly denied an uninterrupted 30-minute meal period for every shift of at least five hours,
19 and a second uninterrupted 30-minute meal period for every shift of at least ten hours. In lieu of
20 providing proper meal and rest breaks, Defendants failed to pay premium wages to Plaintiffs at
21 the time they were owed as well as upon separation of employment. In addition, Defendants
22 failed to pay wages to Plaintiffs and other employees in a form that was negotiable and payable in
23 cash, without discount, at an established place of business in California. Plaintiffs received
24 paychecks drawn from a bank account at Harris Bank, an entity with no California locations. The
25 paychecks do not list a business address where the paychecks may be cashed in the State of
26 California without any fees. As a result, Plaintiffs were forced to incur various fees/charges to
27 access their wages and therefore were not provided with all earned wages upon separation of
28 employment. Moreover, as a result of the above violations, Plaintiffs were not provided with

1 accurate itemized wage statements that correctly identified the gross and net wages earned, and
2 premium pay for missed meal and rest breaks. Independent from the above allegations, whenever
3 Plaintiffs earned overtime wages, the wage statements issued to Plaintiffs failed to correctly
4 identify the overtime rates of pay, number of hours worked at each rate of pay, and total hours
5 worked in the pay period. More specifically, the overtime rate of pay was identified as the half-
6 time (0.5) rate, rather than one and one-half (1.5) times the regular rate of pay. This is a violation
7 of Labor Code § 226(a)(9), since the wage statements do not accurately list the overtime rate of
8 pay, which is an hourly pay rate. In addition, when overtime hours were worked, Defendant
9 reported more base hours worked than were actually worked. The wage statements also
10 misstated the total hours worked during the pay period. Thus, Plaintiffs are members of the
11 Class and have suffered the alleged violations of California Labor Code §§ 201-203, 226, 226.7,
12 and 512, and the UCL.

13 25. The California Labor Code upon which Plaintiffs base these claims is broadly
14 remedial in nature. These laws and labor standards serve an important public interest in
15 establishing minimum working conditions and standards in California. These laws and labor
16 standards protect the average working employee from exploitation by employers who may seek to
17 take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment.

19 26. The nature of this action and the format of laws available to Plaintiffs and
20 members of the Class identified herein make the class action format a particularly efficient and
21 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
22 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
23 advantage since it would be able to exploit and overwhelm the limited resources of the individual
24 plaintiff with their vastly superior financial and legal resources. Requiring each Class Member to
25 pursue an individual remedy would also discourage the assertion of lawful claims by employees
26 who would be disinclined to file an action against their former and/or current employer for real
27 and justifiable fear of retaliation and permanent damage to their careers at subsequent
28 employment.

1 27. The prosecution of separate actions by the individual Class Members, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
3 to individual Class Members against the Defendants and which would establish potentially
4 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
5 individual Class Members which would, as a practical matter, be dispositive of the interest of the
6 other Class Members not parties to the adjudications or which would substantially impair or
7 impede the ability of the Class Members to protect their interests. Further, the claims of the
8 individual members of the Class are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the concomitant costs and expenses.

10 28. Such a pattern, practice, and uniform administration of corporate policy regarding
11 illegal employee compensation described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class identified herein, in a civil action, for any and all applicable
13 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
14 of California Labor Code § 226 and Code of Civil Procedure § 1021.5.

15 29. Proof of a common business practice or factual pattern, which the named Plaintiffs
16 experienced and is representative of, will establish the right of each of the members of the Class
17 to recovery on the causes of action alleged herein.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 226.7**

20 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

21 30. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
22 though fully set forth herein.

23 31. This cause of action is brought pursuant to Labor Code § 226.7, which requires an
24 employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major
25 fraction thereof.

26 32. Plaintiffs and other Class Members regularly worked shifts of three and one-half
27 (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period each day.
28 Furthermore, Plaintiffs and other Class Members who worked shifts of seven and one-half (7.5)

1 hours or more per day had a right to take a second 10-minute rest period.

2 33. At all relevant times, Defendants failed in their affirmative obligation to provide
3 Plaintiffs and other Class Members with the opportunity to take rest periods in accordance with
4 the mandate of the California Labor Code and the applicable IWC Wage Order. As a pattern and
5 practice, Defendants suffered and permitted Plaintiffs and Class Members to work through legally
6 required rest breaks and denied Plaintiffs and Class Members the opportunity to take off-duty rest
7 breaks.

8 34. As a pattern and practice, Defendants regularly required Plaintiffs and Class
9 Members to work through their rest periods without payment of premium compensation and
10 denied Plaintiffs and Class Members the right to take proper rest periods as required by law.

11 35. Such a pattern, practice and uniform administration of corporate policy as
12 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class in a
13 civil action, for the unpaid balance of the unpaid premium compensation pursuant to California
14 Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties,
15 and costs of suit.

16 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
17 willful failure to provide all rest period premium wages due and owing to Plaintiffs and Class
18 Members upon separation of employment results in a continued payment of wages up to thirty
19 (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who have
20 separated from employment are entitled to compensation pursuant to Labor Code § 203.

21 **SECOND CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

23 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

24 37. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
25 though fully set forth herein.

26 38. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
27 require an employer to provide a duty-free, 30-minute meal period within the first five (5) hours
28 for shifts in excess of five (5) hours per day. An employer has the obligation to provide a second

1 duty-free, 30-minute meal period for shifts in excess of ten (10) hours per day.

2 39. Plaintiffs and Class Members regularly worked in excess of five (5) hours per day
3 and accordingly had a right to take a 30-minute meal period each day worked in excess of five (5)
4 hours. Furthermore, Plaintiffs and Class Members who worked in excess of ten (10) hours per
5 day had a right to take a second 30-minute meal period each day worked in excess of ten (10)
6 hours.

7 40. At all relevant times, Defendants failed in their affirmative obligation to ensure
8 that Plaintiffs and Class Members had the opportunity to take and were provided with off-duty
9 meal periods in accordance with the mandate of the California Labor Code and the applicable
10 IWC Wage Order. At all relevant times, Plaintiffs and Class Members were suffered and
11 permitted to work through legally required meal breaks and were denied the opportunity to take
12 their off-duty meal breaks.

13 41. As Plaintiffs and Class Members were denied legally compliant off-duty meal
14 periods, Defendants are responsible for paying premium compensation pursuant to Labor Code §§
15 226.7 and 512 and the applicable IWC Wage Order. Defendants, as a matter of corporate policy
16 and procedure, regularly failed to pay such premium compensation for each 30-minute duty-free
17 meal period Plaintiffs and Class Members missed.

18 42. As a pattern and practice, Defendants regularly required Plaintiffs and Class
19 Members to work through their meal periods without proper compensation and denied Plaintiffs
20 and Class Members the right to take proper meal periods as required by law.

21 43. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class in a
23 civil action, for the unpaid balance of the unpaid premium compensation pursuant to California
24 Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including interest thereon,
25 penalties, and costs of suit.

26 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
27 willful failure to provide all meal period premium wages due and owing to Plaintiffs and Class
28 Members upon separation of employment results in a continued payment of wages up to thirty

(30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203

(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)

45. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

46. Labor Code § 201 provides that all wages earned and unpaid at the time of an employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages must be paid not later than 72 hours thereafter, unless the employee has given 72 hours previous notice, in which case the employee must be paid all wages due and earned at the time of quitting. Labor Code § 203 provides that an employer who willfully fails to pay such wages due to an employee who is discharged or quits must pay that employee waiting-time penalties in the form of a day's wages up to 30 days until all of the wages owed are paid.

47. As a pattern and practice, Defendants regularly and willfully failed and refused to pay all wages due and earned to discharged employees at the time of their termination, or within 72 hours of employees who quit and/or have resigned, or at the time of termination for those employees who gave 72 hours' notice. More specifically, Defendants violated Labor Code §§ 201-203 by issuing payment of wages via paychecks issued by Harris Bank, an entity with no California locations, to Plaintiffs and Class Members who have separated from employment. As alleged herein, the paychecks do not list a business address where the paychecks may be cashed in the State of California without any fees. As a result, Plaintiffs and Class Members were forced to incur various fees/charges to access their wages and therefore were not provided with all earned wages.

48. As such, Defendants had a uniform corporate pattern and practice and procedure regarding the above practice in violation of California Labor Code §§ 201-203.

49. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation as described herein is unlawful and creates an entitlement to
2 recovery by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of
3 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
4 the mandate of California Labor Code §§ 201-203, and 218.5.

5 **FOURTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 226(a)**

7 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

8 50. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
9 though fully set forth herein.

10 51. Labor Code § 226(a) requires employers to provide itemized wage statements to its
11 employees that identify accurate information, including without limitation, the total hours worked
12 by the employee and all applicable hourly rates of pay in effect during the pay period.
13 Defendants failed in their affirmative obligation to provide accurate itemized wage statements in
14 violation of Labor Code § 226(a).

15 52. Plaintiffs and the Class were paid hourly as non-exempt employees. As such, the
16 wage statements should have complied with all of the enumerated requirements set forth in Labor
17 Code § 226(a). However, whenever Plaintiffs and Class Members were paid overtime wages,
18 their wage statements failed to identify the correct overtime rates of pay. In this regard,
19 Defendants had a policy and practice of inaccurately listing the overtime rate of pay as the half-
20 time (0.5) rate, instead of one and one-half (1.5) times the regular rate of pay. This policy and
21 practice directly violates Labor Code § 226(a)(9).

22 53. As a separate violation of Labor Code § 226(a), Defendants also provided wage
23 statements to Plaintiffs and Class Members that inaccurately identified the total hours worked in
24 the pay period whenever overtime wages were paid. In this regard, when overtime hours were
25 listed on wage statements, Defendants reported more base hours worked than were actually
26 worked. Whenever the hours worked as listed on the wage statements are added up, the sum total
27 does not correspond to the actual total hours worked in the pay period. Thus, Plaintiffs and Class
28 Members cannot determine the total hours worked just by looking at the wage statements or by

1 simple calculation. This is a direct violation of Labor Code § 226(a)(2).

2 54. In addition, as a result of the meal and rest period violations above, the wage
3 statements issued by Defendants failed to correctly identify accurate gross and net wages earned,
4 and premium pay for missed meal and rest breaks.

5 55. Such a pattern, practice and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class
7 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
8 including interest thereon, attorneys' fees, and costs of suit according to the mandate of Labor
9 Code § 226.

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.**
12 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

13 56. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
14 though fully set forth herein.

15 57. Defendants, and each of them, have engaged and continue to engage in unfair and
16 unlawful business practices in California by practicing, employing and utilizing the employment
17 practices outlined above, include, to wit, by: (a) failing to provide proper rest breaks, or pay rest
18 period premium compensation in lieu thereof, in violation of Labor Code § 226.7; (b) failing to
19 provide proper meal breaks, or pay meal period premium compensation in lieu thereof, in
20 violation of Labor Code §§ 226.7 and 512; (c) failing to timely pay all wages upon separation of
21 employment, in violation of Labor Code §§ 201-203; and (d) violating Labor Code § 212 by
22 failing to wages that were negotiable and payable in cash, without discount, at an established
23 businesses in the State of California.

24 58. Defendants' utilization of such unfair and unlawful business practices constitutes
25 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

26 59. Plaintiffs seek, on behalf of themselves and other members of the Class similarly
27 situated, full restitution of monies, as necessary and according to proof, to restore any and all
28 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices

complained of herein.

60. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiffs and other members of the Class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

61. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

62. Plaintiffs bring this cause of action as proxies for the State of California and in this capacity, seek penalties on behalf of all Aggrieved Employees from November 15, 2019, through the present, for Defendants' violations of Labor Code §§ 201-203, 212, 226, 226.7, and 512, arising from Defendants': (a) failure to provide proper rest breaks, or pay rest period premium compensation in lieu thereof, in violation of Labor Code § 226.7; (b) failure to provide proper meal breaks, or pay meal period premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (c) failure to timely pay all wages upon separation of employment, in violation of Labor Code §§ 201-203; (d) failure to pay wages that were negotiable and payable in cash, without discount, at an established businesses in the State of California, in violation of Labor Code § 212; and (e) failure to provide accurate wage statements to Plaintiffs and other Aggrieved Employees in violation of Labor Code § 226(a).

63. On or about November 15, 2020, Truong sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 212, 226, 226.7, and 512, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiffs as to whether it intends to investigate the Labor Code violations

provided for in the written notice. Pursuant to Labor Code § 2699.3, Truong also sent written notice of the alleged Labor Code §§ 201-203, 212, 226, 226.7, and 512 violations to Defendants via certified mail.

64. On or about February 24, 2020, Smith sent written notice to the LWDA of Defendants' violations of Labor Code § 226(a), pursuant to PAGA. As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiffs as to whether it intends to investigate the Labor Code violations provided for in the written notice. Pursuant to Labor Code § 2699.3, Smith also sent written notice of the alleged Labor Code § 226(a) violations to Defendants via certified mail.

65. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all applicable civil penalties for Defendants' violations of Labor Code §§ 201-203, 212, 226, 226.7, and 512 for the time period described above, on behalf of themselves and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiffs as the representatives of the Class as described herein;
3. For an order appointing counsel for Plaintiffs as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for penalties pursuant to statute as set forth in California Labor Code § 203, and for costs and attorney's fees;
7. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

1 8. Upon the Fifth Cause of Action, for restitution to Plaintiffs and other similarly
2 effected members of the general public of all funds unlawfully acquired by Defendants by means
3 of any acts or practices declared by this Court to be in violation of Business and Professions Code
4 § 17200, *et seq.*;

5 9. Upon the Sixth Cause of Action, for the full amount of civil penalties according to
6 the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys' fees;

7 10. On all causes of action, for attorneys' fees and costs as provided by California
8 Labor Code §§ 218.5, 226, and 2699 and Code of Civil Procedure § 1021.5; and

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

10
11 DATED: June 8, 2021

DIVERSITY LAW GROUP, P.C.

12
13 By: 

Larry W. Lee

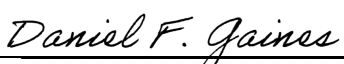
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Attorneys for Plaintiff Clarence Smith, the Class,
and Aggrieved Employees

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17 DATED: June 8, 2021

GAINES & GAINES

A Professional Law Corporation

18
19 By: 

Daniel F. Gaines

Sepideh Ardestani

Attorneys for Plaintiff Phuoc Truong, the Class, and
Aggrieved Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On June 8, 2021, I served the following document(s) described as: **FIRST**
11 **AMENDED CONSOLIDATED CLASS AND REPRESENTATIVE ACTION**
12 **COMPLAINT** on the interested parties in this action as follows:

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29 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
30 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
31 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
32 the above-entitled case. The service transmission was reported as complete and a copy of the
33 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
34 in this office.

1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct. Executed on June 8, 2021, at Los Angeles, California.

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4  _____
Olympia Pena