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SAN LUIS OBISPO SUPERIOR COURT
BY M. Zepeda
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

R. MAY, an individual;

Plaintiff,

v.

HANK'S WELDING SERVICE, INC., a
California corporation; HENRY ALAN
HEER, an individual; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: **20CVP0265**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Discrimination - *Gov. Code* § 12940(a);
2. Retaliation - *Gov. Code* § 12940(h);
3. Failure to Prevent Discrimination and Retaliation - *Gov. Code* § 12940(k);
4. Unpaid Minimum Wages - *Lab. Code* §§ 1194, 1194.2, and 1197.1;
5. Nonpayment of Overtime Compensation - *Lab. Code* §§ 510, 558, 1194, 1194.2, 1197.1, 1198, and IWC Wage Order 16;
6. Premium Pay for Rest Period Violations - *Lab. Code* § 226.7;
7. Premium Pay for Meal Period Violations - *Lab. Code* §§ 226.7 and 512;
8. Itemized Wage Statement Violations - *Lab. Code* §§ 226, 226.3, 226.6, 1174 and 1174.5;
9. Waiting Time Penalty for Nonpayment of Wages - *Lab. Code* §§ 201, 202 and 203;

10. Failure to Pay for Expense Reimbursement
- *Lab. Code* § 2802;

11. Violation of Unfair Business Practices -
Bus. & Prof. Code §§ 17200 *et seq.*

12. Representative Action for Civil Penalties
for Violation of the Private Attorneys General
Act - *Lab. Code* §§ 2698, *et seq.*

Plaintiff R. MAY alleges as follows:

THE PARTIES

1. Plaintiff R. MAY (“Plaintiff”) is an individual who, at all relevant times alleged herein, lived and worked in or around the City of Paso Robles, County of San Luis Obispo, State of California, and in other locations throughout California.

2. Defendant HANK’S WELDING SERVICE, INC. is a California corporation and, at all relevant times alleged herein, was and is involved in the business of welding in the County of San Luis Obispo, State of California, and in other locations throughout California.

3. Defendant HENRY ALAN HEER is an individual and, at all relevant times alleged herein, is and was involved in the business of welding in the County of San Luis Obispo, State of California, and in other locations throughout California, and is and was a managing agent of Defendant HANK’S WELDING SERVICE, INC.

4. The true names and capacities, whether individual, corporate, or otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the events and happenings referred to herein and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of this Court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as DOES when the same have been finally ascertained.

5. When reference is made in this Complaint to “Defendants,” such allegations shall be deemed to mean the acts of all named and DOE Defendants, whether acting individually, jointly, or severally.

6. Plaintiff is further informed and believes, and based thereon alleges, that at all times mentioned herein, each of the Defendants was the alter ego, joint venturer, co-employer, joint employer, agent, servant, employee, co-venturer, or co-conspirator of each of the remaining Defendants, and was at all times herein mentioned, acting within the course, scope, purpose, consent, knowledge, ratification, and authorization of such agency, employment, joint venture, and conspiracy.

JURISDICTION AND VENUE

7. Subject matter jurisdiction is met in this Court as the action involves an amount in controversy exceeding \$25,000.00.

8. Venue is proper because Plaintiff was employed in and the wrongful, discriminatory, and retaliatory acts by Defendants occurred in the County of San Luis Obispo, State of California, Defendants were conducting business in the County of San Luis Obispo, State of California, and Defendants' records relevant to the wrongful, discriminatory, and retaliatory practices alleged herein are maintained and administered in the County of San Luis Obispo, State of California, all of which render this matter within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

9. Defendants operate a welding business and hired Plaintiff as a welder on or about January 11, 2016. Plaintiff was an employee of and worked for Defendants until on or about May 3, 2019.

10. At all relevant time alleged herein, Plaintiff's wages, hours, and working conditions were governed by, *inter alia*, Title 8, California Code of Regulations Section 11070 and Industrial Welfare Commission Order No. 16-2001, which regulates Wages, Hours

1 and Working Conditions for Construction Occupations, and its predecessor wage orders
2 (collectively “Wage Order 16”).

3 11. Plaintiff worked both in Defendants’ Paso Robles, California shop location,
4 and on out-of-town jobs with a crew. The crew typically would leave early on Monday
5 mornings and return late on Fridays. The out-of-town jobs included working on construction
6 projects at wineries in Napa Valley. The crew would stay at an airbnb or hotel when working
7 out of town. During these out-of-town trips, Plaintiff was routinely harassed by his supervisor
8 and Plaintiff complained to Defendants about this harassment.
9

10 12. Throughout his employment, Plaintiff regularly traveled to and from projects
11 for which he was not compensated at all, including uncompensated “local” travel time when
12 working out of town.

13 13. Throughout his employment, Plaintiff regularly worked in excess of eight (8)
14 hours per day or forty (40) hours per week, for which he was not paid any overtime
15 compensation.

16 14. Throughout his employment, Plaintiff regularly was not permitted or
17 authorized by Defendants to take a net 10-minute rest period for each four hours of work
18 performed or major fraction thereof.

19 15. Throughout his employment, Plaintiff regularly was not provided with an
20 uninterrupted 30-minute meal period by the start of the fifth hour of work or a second
21 uninterrupted 30-minute meal period when he worked more than ten (10) hours per day.
22

23 16. During Plaintiff’s employment with Defendants, Plaintiff regularly incurred in
24 direct consequence of the discharge of his duties various business expenses or losses for
25 which he was not reimbursed, including but not limited to expenses related to the use of his
26 personal vehicle.

27 17. During Plaintiff’s employment with Defendants, Defendants knowingly and
28 intentionally failed to provide Plaintiff with accurate wage statements as required by *Labor*
Code § 226(a).

1 18. On April 19, 2019, Plaintiff was injured on the job while working out of town.
2 He fell out of the bed of a truck and injured his left shoulder and ribs. Plaintiff did not
3 immediately seek medical attention, but his orthopedic injuries continued to hamper his
4 ability to work. On May 2, 2019, Plaintiff requested to see a doctor and was examined that
5 same day. The doctor released Plaintiff to go back to work on light duty and Defendants were
6 informed of this. The next morning, on May 3, 2019, Defendants terminated Plaintiff's
7 employment.
8

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 19. On February 21, 2020, within one year of the last date of the discrimination
11 and retaliation alleged by Plaintiff against Defendants, Plaintiff filed an appropriate complaint
12 with the Department of Fair Employment & Housing ("DFEH") against Defendants. The
13 DFEH immediately issued to Plaintiff a "Right-To-Sue Notice" based on the allegations
14 contained therein. Accordingly, Plaintiff has fully and timely exhausted all of his
15 administrative remedies prior to filing this lawsuit against Defendants under the California
16 Fair Employment and Housing Act ("FEHA").
17

18 **FIRST CAUSE OF ACTION**

19 **(Discrimination - Gov. Code § 12940(a))**

20 **(By Plaintiff against all Defendants and DOES 1 to 25)**

21 20. Plaintiff incorporates by reference all preceding paragraphs as though set forth
22 herein in full.

23 21. Under *Government Code* § 12940(a), it is an unlawful employment practice for
24 an employer to discriminate against a person because of his or her physical disability.

25 22. Defendants were and are employers as defined under the FEHA.

26 23. Plaintiff was an employee of Defendants.

27 24. Defendants subjected Plaintiff to adverse employment actions, including but
28 not limited to the terms, conditions, or privileges of employment.

1 25. Plaintiff's physical disability was a substantial motivating reason for
2 Defendants' adverse employment actions, including Defendants' termination of Plaintiff's
3 employment.

4 26. As a direct and proximate result of Defendants' conduct, Plaintiff has incurred
5 and will continue to incur general and special damages in an amount to be proven at trial.
6 These damages include, but are not limited to, back pay, front pay, emotional distress, and
7 other pecuniary damages.

8 27. The acts taken toward Plaintiff alleged herein were carried out by Defendants'
9 officers, directors, or managing agents acting in a despicable, oppressive, fraudulent,
10 malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the
11 rights and safety of Plaintiff, thereby justifying an award of punitive damages in a sum
12 appropriate to punish and make an example of Defendants, and each of them, under *Civil*
13 *Code* § 3294.

14 28. Plaintiff has incurred and continues to incur attorneys' fees and costs, and
15 hereby requests his attorneys' fees and costs under *Government Code* § 12965.

16
17 **SECOND CAUSE OF ACTION**

18 **(Retaliation - Gov. Code § 12940(h))**

19 **(By Plaintiff against all Defendants and DOES 1 to 25)**

20 29. Plaintiff incorporates by reference all preceding paragraphs as though set forth
21 herein in full.

22 30. Under *Government Code* § 12940(h), it is an unlawful employment practice for
23 an employer to discharge or otherwise discriminate against any person because the person
24 exercised his or her legal rights under the FEHA.

25 31. Plaintiff exercised his legal rights under the FEHA by complaining about
26 discrimination, harassment, and retaliation in the workplace.

27 32. Defendants terminated Plaintiff's employment and discriminated against him
28 because he complained about discrimination, harassment, or retaliation in the workplace.

1 33. Plaintiff's protected activity was a substantial motivating reason for
2 Defendants' adverse employment actions against Plaintiff as alleged herein.

3 34. As a direct and proximate result of Defendants' conduct, Plaintiff has incurred
4 and will continue to incur general and special damages in an amount to be proven at trial.
5 These damages include, but are not limited to, back pay, front pay, emotional distress, and
6 other pecuniary damages.
7

8 35. The acts taken toward Plaintiff alleged herein were carried out by Defendants'
9 officers, directors, or managing agents acting in a despicable, oppressive, fraudulent,
10 malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the
11 rights and safety of Plaintiff, thereby justifying an award of punitive damages in a sum
12 appropriate to punish and make an example of Defendants, and each of them, under *Civil*
13 *Code* § 3294.

14 36. Plaintiff has incurred and continues to incur attorneys' fees and costs, and
15 hereby requests his attorneys' fees and costs under *Government Code* § 12965.

16 **THIRD CAUSE OF ACTION**

17 **(Failure to Prevent Discrimination, Harassment, Retaliation - Gov. Code § 12940(k))**

18 **(By Plaintiff against all Defendants and DOES 1 to 25)**

19 37. Plaintiff incorporates by reference all preceding paragraphs as though set forth
20 herein in full.

21 38. Under *Government Code* § 12940(k), it is an unlawful employment practice for
22 an employer to fail to take all reasonable steps necessary to prevent discrimination,
23 harassment, or retaliation from occurring in the workplace.
24

25 39. Defendants were and are employers as defined under the FEHA.

26 40. Plaintiff was an employee of Defendants.

27 41. Plaintiff was subjected to discrimination, harassment, or retaliation in the
28 course of his employment with Defendants.

42. Defendants failed to take all reasonable steps necessary to prevent the discrimination, harassment, or retaliation.

43. As a direct and proximate result of Defendants' conduct, Plaintiff has incurred and will continue to incur general and special damages in an amount to be proven at trial. These damages include, but are not limited to, back pay, front pay, emotional distress, and other pecuniary damages.

44. The acts taken toward Plaintiff alleged herein were carried out by Defendants' officers, directors, or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff, thereby justifying an award of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them, under *Civil Code* § 3294.

45. Plaintiff has incurred and continues to incur attorneys' fees and costs, and hereby requests his attorneys' fees and costs under *Government Code* § 12965.

FOURTH CAUSE OF ACTION

(Unpaid Minimum Wages - *Lab. Code* §§ 1194, 1194.2, and 1197.1)

(By Plaintiff against all Defendants and DOES 1 to 25)

46. Plaintiff incorporates by reference all preceding paragraphs as though set forth herein in full.

47. *Labor Code* §§ 1194, 1194.2, and 1197.1 provide that any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage compensation in a civil action plus an additional equal amount as liquidated damages, interest thereon, reasonable attorneys' fees, and costs of suit.

48. Plaintiff is or was an employee in the State of California and Defendants were and are an employer employing persons in the State of California. As such, Plaintiff was the type of person contemplated to be protected by *Labor Code* §§ 1194, 1194.2, and 1197.1, and

1 these provisions were intended to apply to Defendants and to prevent the type of injury and
2 damage set forth herein.

3 49. Plaintiff worked hours for which he was not compensated by Defendants. As
4 such, Plaintiff has not been paid the California minimum wage for these hours worked.

5 50. As a result of Defendants' aforementioned violations of California law,
6 Plaintiff is entitled to recover nominal, actual, compensatory, and liquidated damages in
7 amounts according to proof at time of trial.
8

9 **FIFTH CAUSE OF ACTION**

10 **(Nonpayment of Overtime Compensation - *Lab. Code* §§ 510, 558, 1194, 1194.2, 1197.1,**
11 **1198, and IWC Wage Order 16)**

12 **(By Plaintiff against all Defendants and DOES 1 to 25)**

13 51. Plaintiff incorporates by reference all preceding paragraphs as though set forth
14 herein in full.

15 52. *Labor Code* §§ 1194, 1194.2, and 1197.1 provide that any employee receiving
16 less than the legal overtime compensation applicable to the employee is entitled to recover in
17 a civil action the unpaid balance of the full amount of this overtime compensation, plus an
18 additional equal amount as liquidated damages, interest thereon, reasonable attorneys' fees,
19 and costs of suit. Section 3(A) of Wage Order 16 requires employers to pay employees one-
20 and-one-half (1-1/2) times their regular hourly rate for all those hours worked in excess of
21 forty (40) hours in one work week or in excess of eight (8) hours in one work day, and two (2)
22 times the regular rate of pay for hours worked in excess of twelve (12) hours per day, unless
23 such employees are exempt from the requirements of Wage Order 16.
24

25 53. Plaintiff regularly worked more than eight (8) hours per day or forty (40) hours
26 per week for Defendants. Defendants failed to compensate Plaintiff for overtime hours
27 worked in excess of (8) hours per day or forty (40) hours per week as required.

28 54. Plaintiff was an employee in the State of California and Defendants were an
employer in the State of California. As such, Plaintiff was the type of person contemplated to

1 be protected by Wage Order 16 and the Labor Code, and these regulations were intended to
2 apply to Defendants and to prevent the type of injury and damage set forth herein.

3 55. As a result of Defendants' conduct in requiring Plaintiff to work in excess of
4 eight (8) hours per day or forty (40) hours per week without paying one-and-one-half (1-1/2)
5 times his regular hourly rate, or his double-time hourly rate as applicable, Plaintiff has
6 sustained damages in the amount of the unpaid one-and-one-half (1-1/2) times his regular
7 hourly rate, or his unpaid double-time hourly rate as applicable, for all overtime hours
8 worked, plus liquidated damages, together with interest thereon and attorneys' fees and costs
9 of suit.
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11 **SIXTH CAUSE OF ACTION**

12 **(Premium Pay for Rest Period Violations - *Lab. Code* § 226.7)**

13 **(By Plaintiff against all Defendants and DOES 1 to 25)**

14 56. Plaintiff incorporates by reference all preceding paragraphs as though set forth
15 herein in full.

16 57. *Labor Code* §226.7 and Section 11(A) of Wage Order 16 require employers to
17 authorize and permit employees to take a rest period of net ten (10) minutes for each four (4)
18 hours, or major fraction thereof, worked. An employer who fails to provide an employee with
19 a rest period shall pay the employee one hour of pay for each work day that a rest period was
20 missed.

21 58. Throughout his employment, Plaintiff routinely worked in excess of four hours
22 per day but was not permitted or authorized to take a rest period of a net ten (10) minutes for
23 each four-hour work period, or major fraction thereof.

24 59. As a direct and proximate result of Defendants' conduct as alleged above,
25 Plaintiff has sustained damages in the amount of one hour of wages for each day he missed
26 his rest period. The amount of unpaid rest period penalties will be proven at trial.
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SEVENTH CAUSE OF ACTION

(Premium Pay for Meal Period Violations - *Lab. Code* §§ 226.7 and 512)

(By Plaintiff against all Defendants and DOES 1 to 25)

60. Plaintiff incorporates by reference all preceding paragraphs as though set forth herein in full.

61. *Labor Code* §§ 226.7 and 512 and Sections 10(A) and (B) of Wage Order 16 provide that employers must provide employees who work more than five (5) hours per day with a thirty (30) minute meal period wherein the employee is relieved of all duties and a second thirty (30) minute meal period when an employee works more than ten (10) hours per day. *Labor Code* § 226.7 and Section 10(F) of Wage Order 16 also provide that if an employer fails to provide an employee with a thirty (30) minute meal period, the employer shall pay the employee one hour of pay for each work day that a thirty (30) minute meal period was missed.

62. Plaintiff was not provided with all required thirty (30) minute meal periods during his employment with Defendants.

63. As a direct and proximate result of Defendants' conduct as alleged above, Plaintiff has sustained damages in the amount of one hour of wages for each day he missed his meal period. The amount of unpaid meal period penalties will be proven at trial.

EIGHTH CAUSE OF ACTION

(Itemized Wage Statements Violation - *Lab. Code* §§ 226, 226.3, 226.6, 1174, and 1174.5)

(By Plaintiff against all Defendants and DOES 1 to 25)

64. Plaintiff incorporates by reference all preceding paragraphs as though set forth herein in full.

65. *Labor Code* § 226 provides that every employer must furnish each employee with an itemized statement of wages and deductions at the time of payment of wages.

1 66. Defendants knowingly and intentionally failed to provide Plaintiff with
2 accurate wage statements as required by *Labor Code* § 226(a).

3 67. Plaintiff suffered injuries because Defendants failed to pay him regular wages
4 and overtime compensation, failed to properly notify him of all hours worked or rate of pay,
5 and failed to pay him premium payments for rest and meal period violations.
6

7 68. Under *Labor Code* § 226(e) and (g), Plaintiff seeks a penalty against
8 Defendants not exceeding an aggregate amount of \$4,000, and other penalties under *Labor*
9 *Code* §§ 226.3, 226.6, 1174, and 1174.5.

10 69. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees,
11 and hereby requests his attorneys' fees under *Labor Code* §§ 218.5 and 226.

12 **NINTH CAUSE OF ACTION**

13 **(Waiting-Time Penalty for Nonpayment of Wages - *Lab. Code* §§ 201, 202, and 203)**

14 **(By Plaintiff against all Defendants and DOES 1 to 25)**

15 70. Plaintiff incorporates by reference all preceding paragraphs as though set forth
16 herein in full.

17 71. *Labor Code* § 203 provides that if an employer willfully fails to pay any wages
18 of an employee who is discharged or quits, the wages of such employee shall continue from
19 the due date thereof at the same rate until paid or until an action therefor is commenced, for
20 not more than 30 days.

21 72. Plaintiff was discharged from his employment with Defendants, and
22 Defendants were therefore required to comply with *Labor Code* §§ 201 and 202. More than
23 thirty days have passed since Plaintiff was discharged from his employment with Defendants.
24

25 73. Defendants failed to pay all wages due to Plaintiff upon termination.

26 74. As a result of Defendants' willful conduct in not paying all wages and
27 premiums to which Plaintiff was entitled, Plaintiff is entitled to thirty days wages as penalty
28 wages under *Labor Code* § 203, together with interest thereon and attorneys' fees and costs of
suit.

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TENTH CAUSE OF ACTION

(Failure to Pay for Expense Reimbursement - *Lab. Code § 2802*)

(By Plaintiff against all Defendants and DOES 1 to 25)

75. Plaintiff incorporates by reference all preceding paragraphs as though set forth herein in full.

76. *Labor Code § 2802* provides that every employer must indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the direction of the employer.

77. Throughout Plaintiff's employment, Plaintiff incurred necessary expenditures and losses in direct consequence of the discharge of his duties or of his obedience to the direction of Defendants, including but not limited to, expenses related to the use of his personal vehicle.

78. Throughout Plaintiff's employment, Defendants knowingly and willfully failed to indemnify Plaintiff for all necessary expenses or losses incurred in direct consequence of the discharge of his duties while working under the direction of Defendants, including but not limited to expenses related to the use of his personal vehicle.

79. As a direct and proximate result of Defendants' conduct as alleged above, Plaintiff has sustained damages in the form of expenses related to the use of his personal vehicle, and other expenses. The amount of unreimbursed expenses will be proven at trial.

ELEVENTH CAUSE OF ACTION

(Unfair Business Practices - *Business & Professions Code §§ 17200 et seq.*)

(By Plaintiff against all Defendants and DOES 1 to 25)

80. Plaintiff incorporates by reference all preceding paragraphs as though set forth herein in full.

81. Plaintiff brings this action for himself and on behalf of the People of the State of California under the provisions of *Business & Professions Code §§ 17200 et seq.* Among the persons adversely affected by the unfair business practices of Defendants as alleged herein

1 are all Defendants' employees who did not receive the lawful minimum or overtime wages,
2 meal or rest period premiums, and timely payment of wages, to which they were entitled.

3 82. A representative action under *Business & Professions Code* §§ 17200, 17203
4 and 17204 on behalf of the general public is appropriate and necessary because Defendants
5 did not provide their employees with the lawful minimum or overtime wages, meal or rest
6 period premiums, and timely payment of wages, as a general business practice contrary to the
7 laws of the State of California.

8 83. Based on the allegations herein, Defendants have violated the following
9 California laws:

10 a. violation of California *Labor Code* § 201 by failing to pay all wages
11 earned and unpaid at the time of Plaintiff's or other former employees' discharge from
12 employment by Defendants;

13 b. violation of California *Labor Code* § 202 by failing to pay all wages
14 earned and unpaid within 72 hours of the time of quitting by former employees from their
15 employment with Defendants;

16 c. violation of California *Labor Code* §§ 204 and 210 for failure to pay
17 wages due;

18 d. violation of California *Labor Code* §§ 216 and 225.5 by willfully
19 refusing to pay wages due and payable after demand was made while having the ability to
20 pay, and by falsely denying the amount or validity thereof, or that the same is due, with intent
21 to secure for themselves any discount upon such indebtedness, and with intent to annoy,
22 harass, oppress, hinder, delay, or defraud, Plaintiff or other current and former employees to
23 whom such indebtedness is due;

24 e. violation of California *Labor Code* § 226.3 by failing to provide
25 Plaintiff or other current and former employees with accurate wage statements;

1 f. committing a misdemeanor in violation of California *Labor Code* §
2 226.6 by knowingly and intentionally violating the provisions of California *Labor Code* §
3 226;

4 g. violation of California *Labor Code* § 226.7 by requiring Plaintiff or
5 other current and former employees to work during meal periods and rest breaks mandated by
6 Wage Order 16 and failing to provide these employees one (1) hour additional wages at the
7 non-exempt employee's regular hourly rate of compensation for each work day that the meal
8 period was not provided and one (1) hour additional wages at the non-exempt employee's
9 regular hourly rate of compensation for each work day that a rest break is not provided;

10 h. violation of California *Labor Code* § 510 by failing to compensate
11 Plaintiff or other current and former employees at the rate of no less than one-and-one-half (1-
12 1/2) times the regular hourly rate of pay for an employee for all work in excess of eight (8)
13 hours in one workday and any work in excess of forty (40) hours in any workweek and the
14 first eight (8) hours worked on the seventh day of work in any one workweek, and by failing
15 to compensate Plaintiff or other current and former employees at the rate of no less than twice
16 the regular rate of pay for an employee for work in excess of twelve (12) hours in one day and
17 any work in excess of eight (8) hours on any seventh day of a workweek;

18 i. violation of California *Labor Code* § 512 by failing to provide
19 employees with a meal period of not less than 30 minutes for every work period of more than
20 five hours per day and by not providing employees with a second meal period of not less than
21 30 minutes for a work period of more than ten (10) hours per day;

22 j. violation of California *Labor Code* §§ 558 and 558.1 and provisions of
23 Wage Order 16 by failing to pay minimum and overtime wages for all hours worked; failing
24 to authorize and permit rest periods and provide meal periods and failing to keep accurate
25 information with respect to all hours worked, including the beginning and ending of each day
26 of work and meal period;

1 k. violation of Wage Order 16 for failing to authorize and permit all
2 employees to take rest periods, which insofar as practicable shall be in the middle of each
3 work period, based on the total hours worked daily at the rate of ten (10) minutes net rest time
4 per four (4) hours or major fraction thereof;

5 l. violation of California *Labor Code* §§ 1197 and 1198 by failing to pay
6 minimum or overtime wages for all hours worked by employees;

7 m. violation of California *Labor Code* § 1197.1 by failing to pay minimum
8 or overtime wages for all hours worked by employees;

9 n. violation of California *Labor Code* §§ 1198 and 1199 by violating or
10 causing violations of Wage Order 16;

11 o. failure to comply with the requirement of *Labor Code* § 2802 to
12 reimburse employees' expenses; and

13 p. failure to comply with the requirement of *Labor Code* § 221 not to
14 charge employees for expenses.

15
16 84. Defendants' acts and omissions alleged herein also constitute unfair and
17 unlawful practices in violation of *Business & Professions Code* §§ 17200 *et seq.* because
18 Defendants' practices violate the above noted laws, or violate an established public policy, or
19 the practice is immoral, unethical, oppressive, unscrupulous and substantially injurious to
20 Plaintiff and other current and former employees, and the public.

21 85. *Business & Professions Code* §§ 17200 *et seq.* defines unfair competition to
22 include any "unfair," "unlawful," or "deceptive" business practice. *Business & Professions*
23 *Code* §§ 17200 *et seq.* provides for injunctive and restitutionary relief for
24 violations. Defendants' failure to provide their employees with lawful minimum or overtime
25 wages, meal or rest period premiums, timely payment of wages, and reimbursement of
26 expenses, constitutes unfair, unlawful, and deceptive business practices.

27 86. As a direct and proximate result of Defendants' conduct as alleged herein,
28 Plaintiff and current and former employees of Defendants have been damaged as a result of

1 Defendants' failure to provide their employees with lawful minimum or overtime wages, meal
2 or rest period premiums, timely payment of wages, and reimbursement of expenses.

3 87. Under *Business & Professions Code* §§ 17200 and 17203, Plaintiff and current
4 and former employees of Defendants are entitled to restitution of all unpaid minimum and
5 overtime wages, unpaid meal and rest premium wages equal to one hour for each day they
6 missed meal or rest periods, and unreimbursed expenses, which have been wrongfully
7 withheld by Defendants, together with interest thereon.
8

9 88. Under *Business & Professions Code* §§ 17200 and 17203, Plaintiff and current
10 and former employees of Defendants are also entitled to recover penalties under *Labor Code*
11 §§ 203 and 226.

12 89. Under *Business & Professions Code* § 17203, Plaintiff seeks on his own behalf
13 and on behalf of the People of the State of California an order enjoining Defendants from
14 continuing the unlawful practices alleged herein. Injunctive relief is appropriate to avoid a
15 multiplicity of suits for Defendants' continuing violations of *Business & Professions Code* §§
16 17200 *et seq.*

17 **TWELFTH CAUSE OF ACTION**

18 **(Penalties under *Labor Code* §§ 2698 and 2699, Private Attorney General Act)**

19 **(By Plaintiff against all Defendants and DOES 1 to 25)**

20 90. Plaintiff incorporates by reference all preceding paragraphs as though set forth
21 herein in full.

22 91. On or about February 21, 2020, Plaintiff provided written notice to the Labor
23 and Workforce Development Agency ("LWDA") and written notice by certified mail to
24 Defendants of the specific violations of the California *Labor Code* that Defendants have
25 violated and continue to violate, including the facts and theories that supported each alleged
26 violation.
27
28

1 92. As of the filing of this complaint, neither the LWDA nor the Department of
2 Industrial Relations, Division of Labor Standards Enforcement have indicated an intention to
3 investigate the alleged violations.

4 93. Accordingly, Plaintiff has exhausted all administrative procedures required of
5 him under *Labor Code* §§ 2698, 2699 and 2699.3, and as a result, is justified as a matter of
6 right in bringing forward this cause of action.

7 94. As a result of the acts alleged above, Plaintiff seeks penalties under *Labor*
8 *Code* §§ 2698 and 2699 because of Defendants' violations of numerous provisions of the
9 California *Labor Code*.

10 95. Plaintiff seeks penalties for Defendants' conduct as alleged herein as permitted
11 by law.

12 96. Under *Labor Code* § 558, Plaintiff is entitled to \$50 for any initial violation
13 and \$100 for all subsequent violations of the above-mentioned provisions of the *Labor Code*.

14 97. Under *Labor Code* § 2699, Plaintiff should be awarded twenty-five percent
15 (25%) of all penalties due under California law, interest, attorneys' fees, and costs.

16 98. Under *Labor Code* § 2699, the State of California should be awarded seventy-
17 five percent (75%) of all penalties due under California law.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

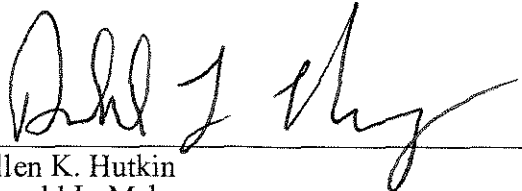
- 21 1. For general, special, and pecuniary damages for Defendants' discriminatory and
22 retaliatory acts against Plaintiff in violation of *Government Code* § 12940(a), (h),
23 and (k);
24 2. For punitive damages under *Civil Code* § 3294 for Defendants' willful and
25 malicious discriminatory and retaliatory acts against Plaintiff;
26 3. For an award of legal expenses and attorneys' fees under *Government Code* §
27 12965 in prosecuting Plaintiff's claims against Defendants for their discriminatory
28 and retaliatory acts;

4. For unpaid minimum wages, according to proof, together with interest thereon;
5. For an amount equal to the unpaid minimum wages, according to proof, together with interest thereon, under *Labor Code* § 1194.2;
6. For an award of all unpaid overtime wages in an amount to be proven at trial;
7. For 30-day penalties under *Labor Code* § 203, according to proof, together with interest thereon;
8. For one hour of pay for each workday that a meal period was missed, according to proof;
9. For one hour of pay for each workday that a rest period was missed, according to proof;
10. For a wage premium of fifty dollars (\$50) for the first period for which Defendants supplied Plaintiff paycheck deduction statements in violation of *Labor Code* § 226 and one hundred dollars (\$100) for each subsequent pay period for which Defendants supplied Plaintiff paycheck deduction statements in violation of *Labor Code* § 226;
11. For an order enjoining Defendants from continuing to provide paycheck deduction statements violating *Labor Code* § 226;
12. For reimbursement of all expenses incurred in direct consequence of the discharge of Plaintiff's duties or of his obedience to the directions of Defendants according to proof, together with interest thereon;
13. For a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, under *Labor Code* § 226.8;
14. For a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each pattern and practice violation, under *Labor Code* § 226.8;

- 1 15. For restitution of full amounts, plus interest at the legal rate, of all lawful
2 minimum or overtime wages, meal or rest period premiums, and reimbursement of
3 expenses, for Plaintiff and current and former employees of Defendants;
4
5 16. For an order enjoining Defendants from continuing to engage in the alleged
6 unlawful business practices in violation of *Business & Professions Code* §§ 17200
7 *et seq.*;
8
9 17. For attorneys' fees, expenses, and costs under *Labor Code* §§ 218.5, 226, 1194,
10 2802, and 2699;
11
12 18. For interest under *Labor Code* §§ 218.6, 1194, and 2802;
13 19. For penalties under *Labor Code* § 2699; and
14
15 20. For such other and further relief as the Court deems just and proper.

16 Dated: August 13, 2020

HUTKIN LAW FIRM, APC

17 By: 
18

Allen K. Hutkin
Donald L. Mabry
Attorneys for Plaintiff