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

EDWARD CASTILLO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

BURBERRY LIMITED, a New York
corporation; and DOES 1 through 100,

Defendants.

Case No: 30-2020-01139838-CU-OE-CXC

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (3) **FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Edward Castillo ("Plaintiff") on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("Complaint") against Defendants Burberry Limited, a New York corporation; and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code sections 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, and Business and Professions Code section 17200 *et. seq.* ("Unfair Competition Law"), and Industrial Welfare Commission Wage Order 7-2001 ("Wage Order 7"), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of

1 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
2 was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money
3 and/or property, and has been deprived of the rights guaranteed by Labor Code sections 201-204,
4 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698
5 *et seq.*, California's Unfair Competition Law, and Wage Order 7, which sets employment
6 standards for the mercantile industry.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing this action and continuing to the present, Defendants did (and continue
9 to do) business within the County of Orange and the State of California by operating luxury
10 fashion retail stores, and therefore, were (and are) doing business in the County of Orange and
11 the State of California.

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

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

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

omissions complained of herein.

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

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a luxury fashion brand with several retail stores throughout Southern California. Plaintiff was employed by Defendants as a non-exempt Sales Associate from approximately November 24, 2015, to May 9, 2019. During Plaintiff's employment, Defendants required Plaintiff and other non-exempt employees to clock in and out for the start and end of their work shifts, as well as record all meal periods and rest periods using an electronic timeclock system.

10. Defendants' timekeeping policies and/or practices resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked. Specifically, Defendants required Plaintiff and other non-exempt employees to respond to customer concerns and communicate with customers throughout the day in order to provide a better customer experience, even when Plaintiff and other non-exempt employees were not scheduled to work or were not on the clock. As a result of Defendants' unlawful policy and/or practice, Plaintiff and other non-exempt employees were not compensated for all hours that they actually worked and were deprived of all minimum and overtime wages owed.

11. Throughout Plaintiff's employment with Defendants, Defendants maintained an unlawful meal period policy and/or practice that failed to provide Plaintiff and other non-exempt employees with timely, uninterrupted, duty-free 30-minute meal periods commencing before the end of the fifth hour of work. Specifically, Plaintiff and other non-exempt employees were frequently unable to take their meal periods prior to the end of the fifth hour of work due to work demands and a lack of employee coverage. Additionally, meal periods were frequently interrupted or cut short due to customer demands. Although Defendants had a policy of paying meal period

premiums in the event of missed, short, or late meal periods, Defendants paid all meal period premiums at the employee's base hourly rate of pay, despite the fact that Plaintiff and other non-exempt employees' regular rates of pay were substantially higher than their base rates of pay due to their receipt of commissions and other incentive pay, including forms of pay listed as "INCENTIVE," "INCENT. KICKER," and "Qtr Str Bonus" (these forms of pay are referred to herein collectively as "Incentive Pay." Additionally, upon information and belief, in the event that a timely meal period was started by an employee, but was interrupted and completed at a later time, Defendants did not pay the employee a meal period premium at all, in violation of Labor Code section 226.7.

12. Defendants also failed to authorize and permit Plaintiff to take all duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. Since Defendants expected Plaintiff to assist customers at all times, Plaintiff's rest periods were often interrupted if a customer needed assistance. Furthermore, Defendants' work demand frequently prevented Plaintiff and other non-exempt employees from taking all their rest periods, due to a lack of employee coverage. Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to take all legally-required rest periods to which they were entitled, and despite the fact that Defendants required employees to record their rest periods which placed Defendants on notice of rest period violations, Defendants failed to compensate Plaintiff and other non-exempt employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code section 226.7.

13. Upon information and belief, during at least a portion of the relevant time period, Defendants failed to maintain pay codes for the payment of rest period premium payments as required by Labor Code section 226.7.

14. Defendants encouraged Plaintiff and other non-exempt employees to utilize their personal cellular phones to communicate with customers through the "wechat" application. In approximately 2018, Defendants introduced company-provided cellular phones, but even after this time, customers who were accustomed to contacting employees on their personal cellular

phones and continued to do so frequently. Despite requiring Plaintiff and other non-exempt employees to utilize their personal cell phones to communicate with customers, Defendants failed to reimburse these non-exempt employees for any portion of their cellular phone bill, in violation of Labor Code section 2802.

15. As a result of Defendants' failure to pay all minimum wages owed, overtime wages owed, and meal and rest period premium wages owed, Defendants failed to timely pay Plaintiff and other non-exempt employees all wages owed at the time of their respective separations from employment, maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees. Defendants also maintained facially deficient wage statements that failed to list the total hours and rates of pay associated with commission overtime payments, denoted on wage statements as "OT ON COMM."

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to section 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 and were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked in excess of 8 hours per day and/or 40 hours per workweek and were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.
- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) received at least one meal period premium that was paid at the employee's base rate of pay during a pay period in which they also earned commissions and/or Incentive Pay; and/or (ii) worked at least one shift in excess of 5 hours without their timekeeping records reflecting a completed meal

period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who did not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this action through the present;

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 3.5 hours without at least one recorded 10-minute net rest period, and who do not have a corresponding rest period premium payment made for such shifts; and/or (ii) worked at least one shift in excess of 6.0 hours without at least two recorded 10-minute net rest periods, and who do not have a corresponding rest period premium payment made for such shifts, during the four years immediately preceding the filing of this action through the present.

e. The Reimbursement Class consists of all Defendants' current and former non-exempt employees in California who were required to use a personal cellular phone to communicate with customers, during the four years immediately preceding the filing of this action through the present.

f. The Wage Statement Class consists of: (i) all members of the Minimum Wage Class, Overtime Class, Meal Period Class and/or Rest Period Class who received a wage statement from Defendants; and/or (ii) all of Defendants' current and former non-exempt employees in California who received a wage statement that included the line item "OT ON COMM," during the one year immediately preceding the filing of this action through the present.

g. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class and/or Rest Period Class who separated their employment with Defendants during the three years immediately preceding the filing of this action 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

are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than two hundred (200) 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 non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants failed to pay members of the Minimum Wage Class at least the statutory minimum wage for all hours worked, pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, sections 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage and/or Overtime Class;
- iv. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code sections 2802 and 2804;
- v. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- vi. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- vii. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code section 226.7;
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226; and
- ix. Whether Defendants paid all wages/compensation due upon separation to

members of the Waiting Time Class pursuant to Labor Code sections 201-203.

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 timekeeping policies/practices, reimbursement policies/practices, and meal and rest period policies/practices. As such, 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:** Plaintiff's claims 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 action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all minimum and overtime wages owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, was not reimbursed for his necessary business expenses incurred, was not provided with accurate, itemized wage statements, and did not receive all final wages owed at the time of his separation of employment.

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 represent the members of the Classes and Plaintiff fully and adequately. 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

1 conditions of employment. The nature of this action and the format of laws available to Plaintiff
2 and members of the Classes make the class action format a particularly efficient and appropriate
3 procedure to redress the violations alleged herein. If each employee were required to file an
4 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
5 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
6 their vastly superior financial and legal resources. Moreover, requiring each member of the
7 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
8 employees who would be disinclined to file an action against their former and/or current employer
9 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
10 employment. Further, the prosecution of separate actions by the individual class members, even
11 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
12 with respect to the individual class members against Defendants herein; and which would
13 establish potentially incompatible standards of conduct for Defendants; and/or legal
14 determinations with respect to individual class members which would, as a practical matter, be
15 dispositive of the interest of the other class members not parties to adjudications or which would
16 substantially impair or impede the ability of the class members to protect their interests. Further,
17 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
18 individual prosecution considering all of the concomitant costs and expenses attending thereto.
19 As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil
20 Procedure.

21 **FIRST CAUSE OF ACTION**
22 **MINIMUM WAGE VIOLATIONS**
23 **(AGAINST ALL DEFENDANTS)**

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

25 24. Wage Order 7, section 4 and California Labor Code sections 1197 and 1182.12
26 establish the right of employees to be paid minimum wages for all hours worked, in amounts set
27 by state law. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
28 been paid the legal minimum wage as required by Labor Code section 1197 may recover the

1 unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an
2 amount equal to the unpaid wages and interest accrued thereon.

3 25. At all relevant times herein, Defendants failed to conform their pay practices to
4 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
5 for all hours worked including, but not limited to, all hours they were subject to the control of
6 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
7 Order 7.

8 26. California Labor Code section 1198 makes unlawful the employment of an
9 employee under conditions that the IWC prohibits. California Labor Code sections 1194(a) and
10 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage
11 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated
12 damages in an amount equal to the wages due and interest thereon.

13 27. As a direct and proximate result of Defendants' unlawful conduct as alleged
14 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
15 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
16 entitled to recover economic and statutory damages and penalties and other appropriate relief as
17 a result of Defendants' violations of the California Labor Code and Wage Order 7.

18 28. The foregoing practices and policies are unlawful and create an entitlement to
19 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
20 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
21 civil penalties, attorney's fees, and costs of suit according to California Labor Code sections 204,
22 558, 1194, 1197, and 1198, Wage Order 7, and Code of Civil Procedure section 1021.5.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL OVERTIME WAGES**

25 **(AGAINST ALL DEFENDANTS)**

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

27 30. This cause of action is brought pursuant to Labor Code sections 204, 510, 558,
28 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all

overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code section 1194 and Wage Order 7. Wage Order 7, section 3 requires an employer to pay an employee one and one-half (1½) times the employee's regular rate of pay for the first 8 hours worked on the seventh consecutive day of work in a workweek. Wage Order 7, section 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 8 hours on the seventh consecutive day of work in a workweek.

32. At all times relevant herein, Defendants caused Plaintiff and other non-exempt employees to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

33. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code sections 204, 510, 558, 1194, and 1198, Wage Order 7, and Code of Civil Procedure section 1021.5.

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

36. At all relevant times herein, Defendants were subject to Labor Code section 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive

any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

37. As alleged herein, due to Defendants’ unlawful reimbursement practices, Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all necessary business expenses incurred, including, among other things, personal cell phone usage.

38. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code sections 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code section 2802.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, section 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants’ violations, Defendants did not always pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code sections 226.7 and 512.

41. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code sections 226.7, 512, and 558, Wage Order 7, and Code of Civil Procedure section 1021.5.

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

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

43. Wage Order 7, section 12 and Labor Code sections 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

44. As alleged herein, and due to Defendants' unlawful rest period policies and/or practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all lawful rest periods to which they were legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation, as required by California Labor Code section 226.7.

45. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code sections 226.7, 516, and 558, Wage Order 7, and Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements that included, among other requirements, all overtime and minimum wages earned, and all meal and rest period premium wages owed, and the total hours and rates of pay associated with employees' overtime commission compensation, in violation of Labor Code sections 226 *et seq.*

1 48. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
2 with complete and accurate, itemized wage statements resulted in actual injury, as said failures
3 led to, among other things, the non-payment of all minimum and overtime wages owed, all meal
4 and rest period premium wages owed, and deprived them of the information necessary to identify
5 the discrepancies in Defendants' reported data.

6 49. Defendants' failures create an entitlement to recovery by Plaintiff and members of
7 the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code
8 sections 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
9 costs of suit according to California Labor Code section 226 *et seq.*

10 **SEVENTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**
12 **(AGAINST ALL DEFENDANTS)**

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

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

20 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
22 at the time of their separation including, among other things, underpaid minimum and overtime
23 wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes,
24 and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue
25 to fail to pay members of the Waiting Time Class all earned wages at the end of employment in
26 a timely manner pursuant to the requirements of Labor Code sections 201-203. Defendants'
27 failure to pay all final wages was willful within the meaning of Labor Code section 203.

28 53. Defendants' willful failure to timely pay Plaintiff and members of the Waiting

1 Time Class all earned wages upon separation from employment results in a continued payment
2 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
3 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code section
4 203, plus reasonable attorneys' fees and costs of suit.

5 **EIGHTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

7 **(AGAINST ALL DEFENDANTS)**

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

9 55. Defendants have engaged and continue to engage in unfair and/or unlawful
10 business practices in California in violation of California Business and Professions Code section
11 17200 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all minimum and
12 overtime wages owed; failing to properly calculate and pay all required meal and rest period
13 premium wages owed; failing to reimburse all necessary business expenses incurred; knowingly
14 failing to furnish complete and accurate, itemized wage statements; and failing to pay all final
15 wages at the time of separation from employment.

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

21 57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
22 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
23 monies as necessary and according to proof to restore any and all monies withheld, acquired
24 and/or converted by Defendants pursuant to Business and Professions Code sections 17203 and
25 17208.

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

28 59. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
2 of Defendants' current non-exempt employees, and to enforce important rights affecting the
3 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
4 which he is entitled to recover under Code of Civil Procedure section 1021.5.

5 **NINTH CAUSE OF ACTON**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(AGAINST ALL DEFENDANTS)**

8 60. Plaintiff re-allege and incorporate by refence all previous paragraphs.

9 61. Defendants have committed several Labor Code violations against Plaintiff,
10 members of the Classes, and other aggrieved employees. Plaintiff as an "aggrieved employee"
11 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
12 employees, bring this representative action against Defendants to recover the civil penalties due
13 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
14 according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1)
15 \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each
16 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
17 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
18 initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per
19 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
20 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
21 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
22 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for
24 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 25 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
26 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
27 1197;
28

- b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to reimburse Plaintiff and other aggrieved employees for all necessary expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- d. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- e. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, 558;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements in violation of Labor Code § 226, *et seq.*;
- g. Failing to timely pay Plaintiff and other aggrieved employees all final wages due upon their respective separations from employment in violation of Labor Code §§ 201-203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1174 and 1198.

62. On or around March 30, 2020, Plaintiff notified Defendants via certified mail, and notified 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 California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 61 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his

1 administrative requirements for bringing a claim under the Private Attorneys General Act with
2 respect to these violations.

3 63. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
4 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
5 exempt employees who worked for Defendants in California between March 30, 2019 and the
6 present.

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

11 **PRAYER**

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

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as representative of the Classes;
- 16 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 17 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
18 damages, and penalties owed according to proof pursuant to Labor Code sections 1182.12, 1194,
19 1194.2 and 1197;
- 20 5. Upon the Second Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code sections 204, 510, 558, 1194, and
22 1198;
- 23 6. For the Third Cause of Action, for compensatory, consequential, general, and
24 special damages according to proof pursuant to Labor Code sections 2802 and 2804;
- 25 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code sections 226.7, 512 and 558;
- 27 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
28 special damages according to proof pursuant to Labor Code sections 226.7, 516, and 558;

1 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code
2 section 226 *et seq.*;

3 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
4 to Labor Code sections 201-203;

5 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to be in violation of California Business and Professions Code
8 section 17200 *et seq.*;

9 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
10 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
11 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
12 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
13 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
14 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
15 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
16 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
17 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
18 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
19 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
20 period for those violations of the Labor Code for which no civil penalty is specifically provided,
21 based on the violations of Labor Code sections identified in Paragraph 61 (a)-(i) above;

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

24 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
25 sections 218.5, 226, 1194 *et seq.*, 2802 and 2698 *et seq.*, and Code of Civil Procedure section
26 1021.5; and

27 ///

28 ///

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

2
3 Dated: June 4, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

4
5 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

6
7 **DEMAND FOR JURY TRIAL**

8
9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10 Dated: June 4, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By:


Fletcher W. Schmidt
Attorneys for Plaintiff