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Superior Court of California
County of Los Angeles

JUN 09 2021

Sherri R. Carter, Executive Officer/Clerk of Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SANTOS ORELLANA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SMARTE CARTE, INC., a Minnesota
corporation; and DOES 1 through 100,

Defendants.

Case No.: 20STCV08890

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

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*);
and**
- (8) **WAITING TIME PENALTIES
(LABOR CODE §§ 201—203)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Santos Orellana (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this Second Amended Class and Representative Action Complaint (“Complaint”)
3 against Defendant Smarte Carte, Inc., a Minnesota corporation, and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

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

14 **VENUE**

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

21 **PARTIES**

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

1 1198, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair
2 Competition Law”), and Wage Order 9, which sets employment standards for the transportation
3 industry.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing this action and continuing to the present, Defendants did (and continue
6 to do) business within the County of Los Angeles and the State of California by providing travel-
7 related rentals, such as luggage carts, electronic lockers, and commercial strollers, and related
8 guest services, and therefore, were (and are) doing business in the County of Los Angeles and the
9 State of California.

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

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

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

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
4 members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Defendants provide travel-related rentals, such as luggage carts, electronic lockers,
7 and commercial strollers, and related guest services throughout California. Plaintiff was
8 employed by Defendants as a non-exempt employee from approximately November 2004 in the
9 position of Service Associate. Plaintiff received a notice of termination stating that he was being
10 terminated effective December 31, 2020. Plaintiff worked for Defendants at its location within
11 Los Angeles International Airport, in Los Angeles, California.

12 10. During Plaintiff's employment with Defendants, Defendants utilized a
13 timekeeping system, which upon information and belief, resulted in Plaintiff not being
14 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
15 Specifically, Defendants regularly, systematically, and impermissibly rounded and/or truncated
16 the hours worked by non-exempt employees by maintaining a rounding policy/practice that
17 rounded Plaintiff's and other non-exempt employees' timekeeping entries in 15-minute
18 increments, which resulted, over a period of time, in Defendants' failure to properly compensate
19 their non-exempt employees for all hours worked, and deprived Plaintiff and other non-exempt
20 employees of all minimum and overtime wages earned.

21 11. Defendants also applied this unlawful rounding policy/practice to Plaintiff's and
22 other non-exempt employees' meal periods, further depriving Plaintiff and other non-exempt
23 employees of all minimum and overtime wages earned. *See Kaanaana, et al. v. Barrett Business*
24 *Services, Inc., et al.* (2018) 29 Cal.App.5th 778, 808 (finding that time worked during meal
25 periods results in liability for both "premium pay for the meal period violation and payment of
26 minimum wages for all time worked.").

27 12. Throughout Plaintiff's employment, Defendants also failed to provide Plaintiff
28 and other non-exempt employees with all legally-compliant meal periods due to Defendants'

1 unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute first
2 meal periods commencing before the end of the fifth hour of work. Specifically, Defendants
3 maintained a meal period schedule for Plaintiff and other non-exempt employees that regularly
4 failed to provide lawful meal periods commencing prior to the conclusion of the fifth hour of
5 work, in violation of Labor Code § 512 and Wage Order 9. Defendants also failed to provide
6 Plaintiff and other non-exempt employees with a second duty-free, 30-minute meal period when
7 they worked shifts in excess of 10.0 hours.

8 13. Further, throughout Plaintiff's employment, Defendants maintained an unlawful
9 practice/policy whereby Plaintiff and other non-exempt employees were required to carry a radio
10 on their persons at all times, and respond to any incoming radio calls regardless of when the call
11 came in, including during Plaintiff's and the other non-exempt employees' purported meal
12 periods and rest periods. If a call came in over the radio, Defendants required Plaintiff and other
13 non-exempt employees to immediately return to work from their meal period or rest period and
14 begin work responding to the call, and failed to provide Plaintiff and other non-exempt employees
15 with an alternative opportunity to take a lawful meal period or rest period. This policy fails to
16 relinquish all control over how Plaintiff and other non-exempt employees spend their meal and
17 rest periods, in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257.

18 14. On occasions when Plaintiff and other non-exempt employees were not provided
19 with all lawful meal periods to which they were entitled, or were not authorized and permitted to
20 take all lawful, duty-free rest periods to which they were entitled, Defendants failed to pay
21 Plaintiff and other non-exempt employees an additional hour of premium pay at their respective
22 regular rates of pay for each workday in which a meal period and/or rest period violation occurred,
23 as required by Labor Code § 226.7.

24 15. As a result of Defendants' failure to pay all overtime wages, minimum wages, and
25 meal and rest period premium wages owed, Defendants also maintained inaccurate payroll
26 records and issued inaccurate wage statements to Plaintiff and other non-exempt employees, and
27 failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their
28 respective separations of employment.

CLASS ACTION ALLEGATIONS

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

- a. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per workweek 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 Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who 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.
- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours without their timekeeping records reflecting a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who did not receive a corresponding meal period premium payment for such shifts; and/or (ii) worked at least one shift in excess of 10.0 hours without their timekeeping records reflecting a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who did not receive a corresponding meal period premium payment for such shifts; and/or (iii) worked at least one shift in excess of 5.0 hours and were required to carry a radio on their persons during a recorded meal period, and who did not receive a corresponding meal period premium payment for such shifts, during the four years immediately 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 worked at least one shift in excess of 3.5 hours and were required to carry a radio on their persons, during the four years immediately

preceding the filing of this action through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage 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 fifty (50) 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:

i. 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;

ii. 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;

iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime Class and/or Minimum Wage Class;

- 1 iv. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 v. Whether Defendants authorized and permitted all lawful rest periods to members
4 of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 5 vi. Whether Defendants correctly paid meal and/or rest period premium payments for
6 non-compliant meal and/or rest periods pursuant to Labor Code § 226.7; Whether
7 Defendants furnished legally compliant wage statements to members of the Wage
8 Statement Class pursuant to Labor Code § 226; and
- 9 vii. Whether Defendants paid all wages/compensation due upon separation to
10 members of the Waiting Time Class pursuant to Labor Code §§ 201-203

11 19. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants' policies
14 and/or practices applicable to each individual class member, such as Defendants' uniform
15 timeclock rounding policies/practices and meal and rest period policies/practices. As such,
16 common questions predominate over individual questions concerning each individual class
17 member's showing as to their eligibility for recovery or as to the amount of their damages.

18 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
19 Plaintiff was employed by Defendants as a non-exempt employee in California during the
20 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
21 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum
22 wages owed, was not provided all required meal periods, was not authorized and permitted to
23 take all required rest periods, and was not provided with complete and accurate itemized wage
24 statements.

25 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
26 to represent fairly and adequately the interests of the members of the Classes. Moreover,
27 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
28 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-

and-hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interests of the other class members not parties to adjudications, or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
6 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
7 overtime hours worked, and provide a private right of action for the failure to pay all overtime
8 compensation for overtime work performed.

9 25. At all times relevant herein, Defendants were required to properly pay Plaintiff
10 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
11 Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee
12 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
13 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage
14 Order 9, § 3 also requires an employer to pay an employee double the employee’s regular rate of
15 pay for work in excess of twelve hours each work day and/or in excess of 8 hours on the seventh
16 consecutive day of work in the workweek.

17 26. At all times relevant herein, Defendants caused Plaintiff and members of the
18 Overtime Class to work overtime hours but did not compensate Plaintiff or members of the
19 Overtime Class at one and one-half times their regular rate of pay for such hours. Defendants also
20 caused Plaintiff and the members of the Overtime Class to work in excess of twelve hours in a
21 workday but did not properly compensate Plaintiff and the members of the Overtime Class at
22 double their regular rate of pay for all such hours.

23 27. The foregoing policies and practices are unlawful and create entitlement to
24 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
25 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
26 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
27 9, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

29. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

30. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9.

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

32. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 9.

33. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid

1 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
2 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
3 1194, 1197, and 1198, Wage Order 9, and Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed in their affirmative obligation to provide all of their non-exempt employees in California,
10 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
11 in accordance with the mandates of the California Labor Code and Wage Order 9, § 11, for the
12 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
13 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
14 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
15 California Labor Code §§ 226.7 and 512.

16 36. As a result, Defendants are responsible for paying premium compensation for meal
17 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
18 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Code of Civil Procedure §
19 1021.5.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

24 38. Wage Order 9, § 12 and Labor Code §§ 226.7 and 516 establish the right of
25 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
26 period worked, or major fraction thereof.

27 39. As alleged herein, and due to Defendants' unlawful rest period policies and/or
28 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period

1 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
2 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
3 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
4 California Labor Code § 226.7.

5 40. The foregoing violations create an entitlement to recovery by Plaintiff and
6 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
7 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
8 to Labor Code §§ 226.7, 516, and 558, Wage Order 9, and Code of Civil Procedure § 1021.5.

9 **FIFTH CAUSE OF ACTION**

10 **WAGE STATEMENT VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

13 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
15 and members of the Wage Statement Class with complete and accurate itemized wage statements
16 that included, among other requirements, all overtime and minimum wages earned, all meal and
17 rest period premium wages owed, and all regular, overtime, and/or double time hours worked, in
18 violation of Labor Code § 226 *et seq.*

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

24 44. Defendants' failures create an entitlement to recovery by Plaintiff and members of
25 the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code
26 § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs
27 of suit according to California Labor Code § 226 *et seq.*

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1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 46. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.*, by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
8 wages owed, failing to pay all required meal and rest period premium wages owed, and knowingly
9 failing to furnish complete and accurate itemized wage statements.

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

15 48. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
16 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
17 monies as necessary and according to proof to restore any and all monies withheld, acquired
18 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

19 49. The acts complained of herein occurred within the last four years immediately
20 preceding the filing this action.

21 50. Plaintiff was compelled to retain the services of counsel to file this court action to
22 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
23 of Defendants' current non-exempt employees, and to enforce important rights affecting the
24 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
25 which he is entitled to recover under Code of Civil Procedure § 1021.5.

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SEVENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

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

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide Plaintiff and other aggrieved employees with all lawful meal periods 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;

- d. 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, and 558;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements in violation of Labor Code § 226, *et seq.*;
- f. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198; and
- h. 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, 202, and 203.

53. On or around March 5, 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 52 (a)-(g). 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 administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

54. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-

1 exempt employees who worked for Defendants in California between March 5, 2019 and the
2 present.

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

7 **EIGHTH CAUSE OF ACTION**
8 **WAITING TIME PENALTIES**
9 **(AGAINST ALL DEFENDANTS)**

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

11 57. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an
12 employer to pay all wages earned immediately at the time of separation of employment in the
13 event the employer discharges the employee, or if the employee provides at least 72 hours of
14 notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her
15 intent to quit, said employee's wages become due and payable no later than 72 hours upon said
16 employee's last date of employment.

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

25 59. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time
26 Class all earned wages upon separation from employment results in a continued payment of wages
27 up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the
28

1 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
2 attorneys' fees and costs of suit.

3 **PRAYER**

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

- 6 1. For an order certifying the proposed Classes;
- 7 2. For an order appointing Plaintiff as representative of the Classes;
- 8 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 9 4. Upon the First Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 11 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
12 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
13 1194.2 and 1197;
- 14 6. Upon the Third Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 16 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 18 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
19 226 *et. seq.*;
- 20 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
21 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
22 practices declared by this Court to be in violation of California Business and Professions Code §
23 17200 *et seq.*;
- 24 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
25 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
26 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
27 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
28 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus

25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections identified in Paragraph 52 (a)-(h) above;

11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

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

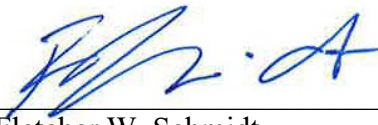
13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 1194 *et seq.*, 226, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: June 9, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: June 9, 2021

HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorneys for Plaintiff

PROOF OF SERVICE

Santos Orellana v. Smarte Carte, Inc.

Los Angeles County Superior Court Case No. 20STCV08890

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

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, California 90245.

On June 9, 2021, I served the foregoing document(s) described as:

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Michael D. Thomas, Esq.
Email: Michael.Thomas@jacksonlewis.com
Eric J. Gitig, Esq.
Email: Eric.Gitig@jacksonlewis.com

JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017 Attorneys for Defendant SMARTE CARTE, INC.

[X] (BY ELECTRONIC MAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed above. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2021, at El Segundo, California.



Jonathan Ramirez