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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO JAVIER ALDACO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

ARTISTIC WELDING, a California corporation;
and DOES 1 through 100, inclusive

Defendants.

Case No. 20STCV15309

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

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

**(7) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);
AND**

**(8) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Alonzo Garcia ("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 Artistic Welding, a California corporation ("Defendant"); and DOES 1 to 100,
4 inclusive (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 lawsuit for recovery of unpaid wages and penalties under Bus. & Prof. Code § 17200; Labor Code
8 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*,
9 and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"), in addition to seeking
10 declaratory relief and restitution. This class action is brought pursuant to California Code of Civil
11 Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor
12 Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue as to each Defendant is proper in this judicial district pursuant to California
15 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
16 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein
17 Defendants maintained offices and conducted business within the County of Los Angeles.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
21 the filing of this lawsuit and within the statute of limitations periods applicable to each cause of
22 action pled herein, Plaintiff was employed by Defendants as an hourly employee. Plaintiff was,
23 and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or
24 property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
25 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, and
26 Wage Order 1, which sets employment standards for the manufacturing industry.

27 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
28 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and do)

1 business in the art of welding and manufacturing, with its headquarters in the County of Los
2 Angeles and State of California, and employed Plaintiff in the State of California, and, therefore,
3 were (and are) doing business in the County of Los Angeles and the State of California.

4 5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of Los Angeles and
6 were the employers of Plaintiff and the Class Members (as defined in Paragraph 17).

7 6. Plaintiff does not know the true names, capacities, relationships and/or the extent
8 of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this
9 lawsuit. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such fictitious
10 names. Plaintiff will seek leave from this Court to further amend this Complaint when the true
11 names and capacities are known. Plaintiff is informed and believes, and based thereon alleges,
12 that each fictitiously named defendant is and was responsible in some way for the alleged wage
13 and hour violations and other wrongful conduct which subjected Plaintiff and the Classes, as
14 defined below, to the illegal employment practices, wrongs and injuries complained of herein. All
15 references in this Complaint to "Defendants" shall be deemed to include all DOE Defendants.

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

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
27 Members (as defined in Paragraph 17).

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10. During the relevant time period, Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by non-exempt employees in Defendants' favor, which resulted, over a period of time, in the failure to properly compensate Plaintiff and other non-exempt employees for all hours worked, thereby depriving them of all required minimum and additional overtime wages earned. Specifically, Defendants' timekeeping mechanism failed to pay Plaintiff and other non-exempt employees for all hours that they worked "on-the-clock," whether by rounding and/or truncating of hours, and/or auto-deducting 30-minutes for meal periods regardless of whether a 30-minute meal period was actually provided. Further, Defendants' rounding mechanism on its time-clock rounded Plaintiff and other non-exempt employees' timekeeping in a manner that was not even-handed over time, as is required to be lawful.

12. Additionally, Defendants failed to provide Plaintiff and other non-exempt employees with timely meal periods of at least 30-minutes. Defendants failed to keep accurate

1 records of employee hours worked, including time records showing when employees were
2 provided with meal periods. During Plaintiff's employment with Defendants, Defendants did not
3 require Plaintiff and other non-exempt employees to clock in and out for their meal periods, and
4 maintained no other records of employee meal periods. Defendants also did not cease operations
5 during meal periods. Instead, Defendants automatically deducted 30-minutes from employee time
6 records regardless of whether they were actually provided with a legally compliant 30-minute
7 meal period. Further, Defendants implemented a policy and practice of utilizing a bell system to
8 release Plaintiff and other non-exempt employees for lunch. Although Plaintiff regularly worked
9 a shift that began prior to 8:00 am, the bell did not release Plaintiff for lunch until 1:00 pm., or
10 after the end of Plaintiff's fifth hour of work. As a result of Defendants' failure to provide all
11 legally required meal periods, unlawful auto-deduction policy, and failure to accurately record
12 employee meal periods, Defendants failed to compensate their employees with the required meal
13 period premium for each workday in which employees experienced a meal period violation as
14 well as compensate its employees for all minimum and overtime wages earned.

15 13. Plaintiff and other non-exempt employees were also not authorized and permitted
16 to take all legally compliant rest periods. Defendants regularly, but not always, required Plaintiff
17 and other non-exempt employees to work in excess of four consecutive hours a day without
18 authorizing and permitting them to take a 10-minute, continuous and uninterrupted, rest period
19 for every four hours of work (or major fraction of four hours), including third rest period in those
20 instances where they worked in excess of 10 hours per workday. Despite Defendants' failure to
21 authorize and permit Plaintiff and other non-exempt employees to take all legally-compliant rest
22 periods to which they are entitled, Defendants have failed to compensate Plaintiff and other non-
23 exempt employees with an additional hour of premium pay at their respective regular rates of pay
24 for each workday in which a rest period violation occurred, as required by Labor Code section
25 226.7.

26 14. Upon information and belief, during at least a portion of the relevant time period,
27 Defendants maintained no payroll code or other mechanism for the payment of meal and/or rest
28 period premium payments under Labor Code section 226.7.

15. As a result of Defendants' failure to pay all overtime and minimum wages as well

as meal period and rest period premium wages, Defendants maintained inaccurate payroll records, issued inaccurate wage statements, and willfully failed to timely pay Plaintiff and other former non-exempt employees all final wages owed at the time of their separation from employment.

16. Additionally, throughout the relevant time period, Defendants failed to provide adequate and suitable seating to its non-exempt employees, despite the fact that seating was possible for its employees throughout the workday.

CLASS ACTION ALLEGATIONS

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

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who (1) worked in excess of eight hours in a workday and/or in excess of 40 hours in a workweek and were subject to Defendants' timekeeping policies and/or practices and/or (2) received Incentive Pay and worked overtime hours during a corresponding time period, during the four years immediately preceding the filing of the lawsuit through the present date.
- 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, during the four years preceding the filing of the lawsuit through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of the lawsuit through the present.
- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked a shift in excess of 3.5 hours, during the four years immediately preceding the filing of the lawsuit through the present.

e. The Wage Statement Class consists of all members of the (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; and (iv) Rest Period Class, who received a wage statement from Defendants during the one year immediately preceding the filing of the lawsuit 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 from Defendants at any during the three years immediately preceding the filing of the lawsuit through the present.

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

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual employees including, without limitation:

- i. Whether Defendants properly paid all overtime wages to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- ii. Whether Defendants properly paid all minimum wages to members of the Minimum Wage Class pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197 and 1198;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code § 226.7;
- v. Whether Defendants provided meal or rest period premium payments for non-compliant meal and/or rest periods to the members of the Meal Period Class and/or

the Rest Period Class pursuant to Labor Code § 226.7;

vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code 226;

vii. Whether Defendants failed to pay all final wages to members of the Waiting Time Class at the time of separation in violation of Labor Code §§ 201-203; and

viii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

20. **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 and meal and rest period policies and/or practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes of limitation applicable to each cause of action pled in this lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum wages, was not provided all legally required meal and rest breaks, was furnished with inaccurate and incomplete wage statements, and was not timely paid all wages owed at the time of his separation from employment.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **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 interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

24. As such, each of the Classes identified in Paragraph 17 is maintainable as a Class under § 382 of the Code of Civil Procedure.

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FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

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

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

27. At all times relevant herein, Defendants were required to properly compensate hourly employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek.

28. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours. Defendants also caused Plaintiff and the members of the Overtime Class to work in excess of 12 hours in a workday but did not properly compensate Plaintiff and the members of the Overtime Class at double their regular rate of pay for such hours. Due to these policies/practices, Defendants failed to pay Plaintiff and members of the Overtime Class all overtime wages earned.

29. Defendants’ policy and practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 510, 558, 1194, and 1198, and IWC Wage Order 1.

1 30. The foregoing policies and practices are unlawful and create an entitlement to
2 recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount
3 of overtime premiums owing, including interest thereon, statutory penalties, civil penalties,
4 attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 510, 558, 1194,
5 1198, and Code of Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

8 **(AGAINST ALL DEFENDANTS)**

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

11 32. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and
12 1198 which provide that all non-exempt employees are entitled to all minimum wages for all
13 hours worked and provide a private right of action for the failure to pay all minimum wage
14 compensation for all work performed.

15 33. At all times relevant herein, Defendants were required to properly compensate
16 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California
17 Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, § 4 requires an employer
18 to pay to every employee on the established payday for the period involved not less than the
19 applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff
20 and the members of the Minimum Wage Class to work but did not properly compensate Plaintiff
21 and the members of the Minimum Wage Class at least minimum wages for such hours.

22 34. At all times relevant herein, Defendants lacked good faith and had no reasonable
23 grounds for believing that their practices in failing to pay all minimum wages owed at the
24 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
25 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
26 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
27 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
28 Labor Code § 1194.2.

1 35. The foregoing practices and policies are unlawful and create entitlement to
2 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
3 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
4 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
5 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code
6 of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§
7 3287(b) and 3289.

8 **THIRD CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 36. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
12 fully set forth herein.

13 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 failed in their affirmative obligation to provide all of their non-exempt employees, including
15 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
16 the mandates of the California Labor Code and Wage Order 1.

17 38. As a result, Defendants are responsible for paying premium compensation for meal
18 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
19 Wage Order 1, Labor Code §§ 226.7, 512, and 558, and Civil Code §§ 3287(b) and 3289.

20 **FOURTH CAUSE OF ACTION**

21 **WAGE STATEMENT VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 39. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
24 fully set forth herein.

25 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
27 and members of the Wage Statement Class with accurate and complete wage statements in
28 violation of Labor Code § 226.

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

42. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable attorney's fees, and costs of suit according to California Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

44. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business & Professions Code § 17200 by failing to pay Plaintiff and the Classes all overtime and minimum wages, failing to provide all required meal periods and rest periods, issuing inaccurate wage statements, and failing to pay all final wages owed upon separation of employment.

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

46. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore all monies withheld, acquired, and/or

converted by Defendants pursuant to California Business & Professions Code §§ 17203 and 17208.

47. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

48. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

50. 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, 1197;
- c. 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;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226, *et seq.*;
- f. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- 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 all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

51. On or around April 24, 2020 and February 23, 2021, Defendants were notified via certified mail, and the California Labor and Workforce Development Agency ("LWDA") was notified via its website, of Defendants' violations of the California Labor Code and the 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 50 (a)-(f). Now that sixty-

1 five days have passed from notification to Defendants and the LWDA of these violations, and
2 the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
3 exhausted his administrative requirements for bringing a claim under the Private Attorneys
4 General Act with respect to these violations.

5 52. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
6 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
7 exempt employees who worked for Defendants in California between April 24, 2019 and the
8 present.

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

13 **SEVENTH CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

17 55. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of
18 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
19 period worked, or major fraction thereof.

20 56. As alleged herein, Defendants failed to authorize and permit Plaintiff and
21 members of the Rest Period Class to take all required rest periods.

22 57. The foregoing violations create an entitlement to recovery by Plaintiff and
23 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
24 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
25 to Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

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1 **EIGHTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

25 **PRAYER**

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

28 1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Plaintiff's counsel as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*;
9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial 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 50 (a)-(h) above.
10. Upon the Seventh Cause of Action, for compensatory, consequential, general and

1 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

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

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

6 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
7 §§ 218.5, 226, and 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

9
10 Dated: March 29, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By:



Paul K. Haines
Attorneys for Plaintiff

13
14 **DEMAND FOR JURY TRIAL**

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

16
17 Dated: March 29, 2021

HAINES LAW GROUP, APC

18
19 By:



Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Francisco Javier Aldaco v. Artistic Welding
Los Angeles County Superior Court Case No. 20STCV15309

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, El Segundo, California 90245.

On March 29, 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:

John Patrick Carey, Esq.
J. PATRICK CAREY, A LAW CORPORATION
18411 Crenshaw Blvd, Suite 120
Torrance, California 90504
Attorneys for Defendant ARTISTIC WELDING

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit

[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 March 29, 2021, at El Segundo, California.


Jonathan Ramirez