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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

CHEYENNE ROBLES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

WESTERN STONE & METAL CORP., a
Colorado corporation; and DOES 1 through
100,

Defendants.

Case No.: MSC20-00392

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

- (1) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);
- (2) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);
- (3) WAITING TIME PENALIES (LABOR
CODE §§ 201-203);
- (4) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*); and
- (5) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

**ELECTRONICALLY
FILED**

5/28/2020

K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
T.Ciardella, DEPUTY CLERK

1 Plaintiff Cheyenne Robles (“Plaintiff”) on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class Action Complaint against Defendant Western
3 Stone & Metal Corp., a Colorado corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under California Labor Code sections 201-203,
8 226 *et seq.*, 226.7, 512, 516, and 558, Business and Professions Code section 17200 *et seq.*, and
9 Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to seeking
10 declaratory relief and restitution. This action is brought pursuant to California Code of Civil
11 Procedure section 382. This Court has jurisdiction over Defendants’ violations of the California
12 Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure sections 395(a) and 395.5, as at least some of the acts and omissions complained of
16 herein occurred in the County of Contra Costa. Defendants transact business within the County
17 of Contra Costa and/or otherwise are found within the County of Contra Costa, and Defendants
18 are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding
22 the filing of this action and within the statute of limitations periods applicable to each cause of
23 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee, and
24 performed work for Defendants within the County of Contra Costa. Plaintiff was, and is, a victim
25 of Defendants’ policies and/or practices complained of herein, lost money and/or property, and
26 has been deprived of the rights guaranteed by Labor Code sections 201-203, 226 *et seq.*, 226.7,
27 512, 516, 558, and 1198, California Business and Professions Code section 17200 *et seq.* (“Unfair
28

Competition Law”), and Wage Order 7, which sets employment standards for the mercantile industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing this action and continuing to the present, Defendants did (and continue to do) business within the County of Contra Costa and the State of California by operating retail jewelry store locations, and therefore, were (and are) doing business in the County of Contra Costa and the State of California.

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

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

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants operate a chain of retail jewelry store locations throughout California
5 and the United States. Plaintiff was employed by Defendants as a non-exempt employee with the
6 job title of Sales Consultant from approximately May 2016 until approximately November 19,
7 2019.

8 10. During at least a portion of Plaintiff's employment with Defendants, Plaintiff and
9 similarly situated employees would clock in and out for the start and end of their work shifts and
10 meal periods using an electronic timeclock system. Simultaneously, Plaintiff and similarly
11 situated employees would manually track the start and end times of their work shifts and meal
12 periods, as well as the "Time Out" and "Time In" for up to two rest periods every day, using a
13 hand-written timekeeping log provided by Defendants.

14 11. During Plaintiff's employment with Defendants, Defendants failed to provide
15 Plaintiff and similarly situated employees with all legally-compliant meal periods due to
16 Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-
17 minute first meal periods commencing before the end of the fifth hour of work, and failed to
18 provide second, duty-free 30-minute meal periods when Plaintiff and similarly situated
19 employees worked shifts in excess of 10.0 hours. For at least a portion of the relevant time period,
20 Defendants maintained an unlawful policy/practice of only paying Plaintiff and similarly situated
21 employees a meal period premium when the employee's meal period commenced after the end of
22 the sixth hour of work, rather than in all instances in which the employee's meal period
23 commenced after the end of the fifth hour of work. As a result, Defendants failed to pay Plaintiff
24 and similarly situated employees an additional hour of premium pay at their respective regular
25 rates of pay for each workday in which a meal period violation occurred, as required by Labor
26 Code section 226.7.

27 12. Defendants also failed to authorize and permit Plaintiff and similarly situated
28 employees 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. On occasions when Plaintiff and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, 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. Based on information and belief, Plaintiff asserts that Defendants maintained the unlawful meal and rest period policies/practices described herein as recently as 2018.

14. As a result of Defendants' failure to pay all meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records and failed to pay all final wages owed to Plaintiff and similarly situated employees upon their respective separations of employment.

15. Defendants also issued facially deficient wage statements to Plaintiff and other non-exempt employees due to Defendants' failure to include the applicable hourly rate for "Bonus OT" as well as the corresponding number of "Bonus OT" hours worked. As a result of Defendants' failure to include the hourly rate for "Bonus OT" as well as the corresponding "Bonus OT" hours worked, Defendants failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code 226(a).

CLASS ACTION ALLEGATIONS

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

- a. 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 do not have a corresponding meal period premium payment made for such shifts; and/or (ii) worked at least one shift in excess of 10.0 hours without their

timekeeping records reflecting a meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts, during the four years immediately preceding the filing of this action through the present.

b. 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; and/or (iii) worked at least one shift in excess of 10.0 hours without at least three 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.

c. The Waiting Time Class consists of all members of the 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.

d. The Wage Statement Class consists of all of Defendants' current and former non-exempt employees in California who received "Bonus OT," during the one year 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 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) 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

1 situated non-exempt employees, which predominate over questions affecting only individual
2 members including, without limitation to:

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

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

20 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
21 Plaintiff was employed by Defendants as a non-exempt employee in California during the
22 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
23 herein, Plaintiff, like the members of the Classes, was not provided all required meal periods, was
24 not authorized and permitted to take all required rest periods, did not receive meal and rest period
25 premium wages at her regular rate of pay for missed or non-compliant meal and rest periods, did
26 not receive all final wages owed at the time of her separation of employment, and did not receive
27 accurate itemized wage statements.

28 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps

1 to represent fairly and adequately the interests of the members of the Classes. Moreover,
2 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
3 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
4 and-hour class actions in state and federal courts in the past and are committed to vigorously
5 prosecuting this action on behalf of the members of the Classes.

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

As such, the Classes identified herein are maintainable as a Class under section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

24. 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, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not 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 §§ 226.7 and 512.

25. 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 §§ 226.7, 512, and 558, Wage Order 7, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

27. Wage Order 7, § 12 and Labor Code §§ 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.

28. 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 paid rest periods to which they were legally entitled. Despite Defendants'

1 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
2 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
3 California Labor Code § 226.7.

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

8 **THIRD CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

35. 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 in violation of Labor Code sections 226 *et seq.*

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

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

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

39. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all required meal and rest period premium wages owed, and failing to pay all final wages at the time of separation from

1 employment.

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

7 41. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
8 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
9 monies as necessary and according to proof to restore any and all monies withheld, acquired
10 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

11 42. The acts complained of herein occurred within the last four years immediately
12 preceding the filing this action.

13 43. Plaintiff was compelled to retain the services of counsel to file this court action to
14 protect her interests and those of the Classes, to obtain restitution on behalf of Defendants' current
15 non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has
16 thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover
17 under Code of Civil Procedure § 1021.5.

18 **PRAYER**

19 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
20 this suit is brought against Defendants, as follows:

- 21 1. For an order certifying the proposed Classes;
- 22 2. For an order appointing Plaintiff as representative of the Classes;
- 23 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 24 4. Upon the First Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 26 5. Upon the Second Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 28 6. Upon the Third Cause of Action, for statutory waiting time penalties pursuant to

1 Labor Code §§ 201-203;

2 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code
3 section 226 *et. seq.*;

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

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

10 10. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
11 Procedure § 1021.5; and

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

13
14 Dated: May 28, 2020 Respectfully submitted,
HAINES LAW GROUP, APC

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16 By: 
17 Fletcher W. Schmidt
18 Attorneys for Plaintiff

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20 **DEMAND FOR JURY TRIAL**

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

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23 Dated: May 28, 2020 Respectfully submitted,
HAINES LAW GROUP, APC

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25 By: 
26 Fletcher W. Schmidt
27 Attorneys for Plaintiff
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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On May 28, 2020, I served the foregoing document(s) described as:

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

Executed on May 28, 2020, at El Segundo, California.


Jonathan Ramirez