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County of Los Angeles

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JONATHAN IBARRA and JESSICA NESTOR,
as individuals and on behalf of all others
similarly situated,

Plaintiffs,

vs.

GREEN MESSENGERS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 20STCV18020

**FIRST 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) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*) and
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiffs Jonathan Ibarra and Jessica Nestor (“Plaintiffs”) on behalf of themselves and all others similarly situated, hereby bring this First Amended Class and Representative Action Complaint (“Complaint”) against Defendant Green Messengers, Inc., a Delaware corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring this action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, Business and Professions Code § 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 9 (“Wage Order 9”), in addition to seeking declaratory relief and restitution. This class action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein, Plaintiffs were and currently are California residents. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non-exempt employees. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained of herein, lost money and/or property, and have been deprived of the rights guaranteed by Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and

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

4. Plaintiffs are informed and believe, and based thereon allege, 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 Los Angeles and the State of California by operating a delivery and courier service with operations throughout southern California, including Los Angeles County, and therefore, were (and are) doing business in the County of Los Angeles and the State of California.

5. Plaintiffs do 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 Plaintiffs will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe, and based thereon allege, 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 Plaintiffs and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiffs are informed and believe, and based thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs 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

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Defendants, who are in the business of delivering packages of consumer goods
6 across California, hire Delivery Drivers to aid in providing delivery services to businesses
7 throughout California. Plaintiff Jonathan Ibarra worked for Defendants as a non-exempt Delivery
8 Driver from approximately April 2017 through approximately August 14, 2019. Plaintiff Jessica
9 Nestor worked for Defendants as a non-exempt Delivery Driver from approximately September
10 2017 to the present. Plaintiff Nestor has been on a medical leave of absence since October 2019.

11 10. Throughout the entirety of Plaintiffs' employment with Defendants, Plaintiffs and
12 other non-exempt Delivery Drivers were required to work more than 8 hours per work day and/or
13 more than 40 hours per work week but did not receive overtime compensation equal to one and
14 one-half times the regular rate of pay for overtime hours. Instead, on information and belief,
15 during at least a portion of the relevant time period, Defendants only compensated Plaintiffs and
16 other non-exempt Delivery Drivers a daily salary of \$150 to \$175 regardless of the number of
17 hours Plaintiffs and other Delivery Drivers actually worked. On information and belief, despite
18 compensating Plaintiffs and other non-exempt Delivery Drivers a daily salary, Defendants issued
19 fraudulent wage statements, which used false hourly rates, purported bonuses, and purported
20 reimbursements as a subterfuge to make it appear that employees were being compensated on an
21 hourly basis, when in fact the various forms of pay were just being used to reach the daily salary
22 amount. Plaintiffs believe Defendants issued these fraudulent wage statements as a subterfuge to
23 avoid actually paying overtime premiums. Alternatively, Defendants failed to compensate
24 Plaintiffs and other non-exempt employees overtime compensation equal to one and one-half their
25 regular rates of pay for working overtime hours due to Defendants' policy and practice of failing
26 to include non-discretionary bonuses in their calculation of the regular rate of pay. Specifically,
27 Plaintiffs and other non-exempt employees earned non-discretionary incentive bonuses, and other
28 forms of pay that cannot be excluded from the regular rate of pay as a matter of law, including

1 but not limited to, payments denoted in their wage statements as “Discretionary B” and “Route
2 Incentive” (hereinafter collectively referred to as “Incentive Pay”). However, Defendants failed
3 to include the value of Incentive Pay when calculating the regular rate of pay for overtime
4 purposes. As a result of Defendants’ fraudulent practices and/or failure to calculate the regular
5 rate of pay, Plaintiffs and other non-exempt Delivery Drivers were deprived of all overtime
6 compensation for all hours worked in violation of Labor Code §§ 204, 510, 1182.12, 1194,
7 1194.2, 1197 and 1198.

8 11. During the relevant time period, Defendants failed to record the actual hours
9 worked by Plaintiffs and other non-exempt Delivery Drivers, which resulted in Plaintiffs not
10 being compensated for all hours actually worked. Prior to each shift, Defendants’ managers and/or
11 supervisors would send a text message to Plaintiffs and other non-exempt Delivery Drivers
12 instructing them when they were required to clock in before their shift, clock out and back in for
13 their meal period, and clock out at the end of their shift. Although Plaintiffs and other non-exempt
14 Delivery Drivers often worked longer hours than the hours specified in the texts, and were almost
15 never able to take a lunch, Defendants still required Plaintiffs and other non-exempt employees
16 to clock in and out according to the predetermined schedules included in the managers’ and/or
17 supervisors’ texts. As a result of Defendants’ unlawful timekeeping policies/practices, Plaintiffs
18 and non-exempt employees were not paid all minimum and overtime wages owed to them.

19 12. Defendants failed to provide Plaintiffs and other non-exempt employees with all
20 required meal periods to which they are entitled. Specifically, despite requiring Plaintiffs and
21 other non-exempt employees to clock-out for meal periods, Defendants nevertheless expected
22 employees to work through their meal periods in order to complete scheduled routes. On those
23 occasions when Plaintiffs and other employees were able to take a meal period, Plaintiffs and
24 other non-exempt Delivery Drivers were not relieved of all duty as Defendants did not allow
25 Plaintiffs and other non-exempt Delivery Drivers to leave their delivery trucks unattended. As a
26 result of Defendants failure to relieve Plaintiffs and other Delivery Drivers of all duties during
27 their purported meal periods, Plaintiffs and other Delivery Drivers were underpaid minimum and
28 overtime wages earned. *See Kaanaana, et al. v. Barrett Business Services, Inc., et al.*, 29 Cal.

App. 5th 778, 808 (2018) (finding that time worked during meal periods results in liability for both “premium pay for the meal period violation and payment of minimum wages for all time worked.”) Furthermore, Defendants did not provide Plaintiffs and other non-exempt employees with second meal periods whenever they worked shifts in excess of 10.0 hours in a workday, which was common for Plaintiffs and other non-exempt employees. Despite Defendants’ failure to provide Plaintiffs and other non-exempt employees with all lawful meal periods to which they were entitled, Defendants failed to compensate these employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

13. Defendants also failed to authorize and permit Plaintiffs and other non-exempt 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. Specifically, due to Defendants’ aggressive delivery schedules and failure to allot adequate time for rest periods, Plaintiffs and other non-exempt employees were prevented from taking all their rest periods. Moreover, Defendants required Plaintiffs and other non-exempt employees to remain with their delivery trucks at all time which further prevented Plaintiffs and other non-exempt employees from taking off-duty rest periods. Additionally, Defendants did not authorize and permit Plaintiffs and other non-exempt employees to take a third rest period on occasions when they worked shifts in excess of 10.0 hours. Despite Defendants’ failure to authorize and permit Plaintiffs and other non-exempt employees to take all legally-compliant rest periods to which they are entitled, Defendants failed to compensate Plaintiffs 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 § 226.7.

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

15. As a result of Defendants’ failure to pay all overtime wages, minimum wages, and meal and rest period premium wages, Defendants also maintained inaccurate payroll records, and

1 issued inaccurate wage statements to Plaintiffs and other non-exempt employees. Defendants
2 also failed to pay all final wages owed to Plaintiff Ibarra and other non-exempt employees upon
3 their respective separations of employment.

4 **CLASS ACTION ALLEGATIONS**

5 16. **Class Definitions:** Plaintiffs bring this action on behalf of themselves and the
6 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 7 a. The Overtime Class consists of all Defendants' current and former non-exempt
8 employees in California who worked more than 8.0 hours per workday and/or 40.0
9 hours per workweek and: (i) received Incentive Pay; (ii) were subject to
10 Defendants' timekeeping policies and/or practices; and/or (iii) worked at least one
11 shift in excess of 5.0 hours and were subject to Defendants' meal period
12 policies/practices, during the four years immediately preceding the filing of this
13 action through the present.
- 14 b. The Minimum Wage Class consists of all Defendants' current and former non-
15 exempt employees in California who: (i) were subject to Defendants' timekeeping
16 policies and/or practices; and/or (ii) worked at least one shift in excess of 5.0 hours
17 and were subject to Defendants' meal period policies/practices, during the four
18 years immediately preceding the filing of this action through the present.
- 19 c. The Meal Period Class consists of all Defendants' current and former non-exempt
20 employees in California who: (i) worked at least one shift in excess of 5.0 hours
21 and were subject to Defendants' meal period policies/practices; and/or (ii) worked
22 at least one shift in excess of 10.0 hours without a second 30-minute meal period
23 commencing prior to the end of the tenth hour of work, during the four years
24 immediately preceding the filing of this action through the present.
- 25 d. The Rest Period Class consists of all Defendants' current and former non-exempt
26 employees in California who: (i) worked a shift in excess of 3.5 hours; and/or (ii)
27 worked a shift in excess of 10.0 hours and were not authorized to take a third rest
28 period, 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, 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 Plaintiffs at this time; however, it is estimated that the members of the Classes number greater than two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

i. Whether Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by requiring members of the Overtime Class to perform overtime work and not paying for all said work;

ii. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

iii. Whether Defendants provided all 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 lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

v. Whether Defendants paid meal and/or rest period premium payments for non-

compliant meal and/or rest periods 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; and

vii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

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

20. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes because Plaintiffs were employed by Defendants as non-exempt employees in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiffs, like the members of the Classes, were deprived of all overtime and minimum wages owed, were not provided all required meal periods, were not authorized and permitted to take all required rest periods, were not provided with accurate, itemized wage statements, and Plaintiff Ibarra did not receive all final wages owed at the time of his respective separation from employment.

21. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiffs. Plaintiffs' 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

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

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY ALL OVERTIME WAGES**

27 **(AGAINST ALL DEFENDANTS)**

28 23. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

5 25. At all times relevant herein, Defendants were required to properly pay Plaintiffs
6 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
7 Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee
8 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
9 of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

10 26. At all times relevant herein, Defendants caused Plaintiffs and members of the
11 Overtime Class to work overtime hours but did not compensate Plaintiffs or members of the
12 Overtime Class at one and one-half times their regular rate of pay for such hours.

13 27. The foregoing policies and practices are unlawful and create entitlement to
14 recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime
15 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
16 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
17 9, and Code of Civil Procedure § 1021.5.

18 **SECOND CAUSE OF ACTION**

19 **MINIMUM WAGE VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

21 28. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 29. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
23 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
24 California Labor Code § 1198 makes unlawful the employment of an employee under conditions
25 that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide
26 that an employee who has not been paid the legal minimum wage as required by Labor Code §
27 1197 may recover the unpaid balance together with attorneys’ fees and costs of suit, as well as
28 liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

1 30. At all relevant times herein, Defendants failed to conform their pay practices to
2 the requirements of the law. This unlawful conduct includes but is not limited to all hours they
3 were subject to Defendants' control. Accordingly, Plaintiffs and members of the Minimum Wage
4 Class were not compensated for all hours actually worked as required by the California Labor
5 Code and Wage Order 9.

6 31. Defendants' timekeeping policies/practices are unlawful and create an entitlement
7 to recovery by Plaintiffs and members of the Minimum Wage Class in a civil action for the unpaid
8 amount of minimum wages, liquidated damages, including interest thereon, statutory penalties,
9 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210,
10 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

11 **THIRD CAUSE OF ACTION**
12 **MEAL PERIOD VIOLATIONS**
13 **(AGAINST ALL DEFENDANTS)**

14 32. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

15 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 failed in their affirmative obligation to provide all of their non-exempt employees in California,
17 including Plaintiffs and members of the Meal Period Class, with all legally compliant meal
18 periods in accordance with the mandates of the California Labor Code and Wage Order 9, § 11,
19 for the reasons set forth in the factual allegations and class definitions sections of this Complaint.
20 Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to
21 Plaintiffs and members of the Meal Period Class at their respective regular rates of compensation,
22 in accordance with California Labor Code §§ 226.7 and 512.

23 34. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
25 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Code of Civil Procedure §
26 1021.5.

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1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 35. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

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

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

18 **FIFTH CAUSE OF ACTION**

19 **WAGE STATEMENT VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

21 39. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs
24 and members of the Wage Statement Class with complete and accurate itemized wage statements
25 that included, among other requirements, all overtime and minimum wages earned, and all meal
26 and rest period premium wages owed, in violation of Labor Code § 226 *et seq.*

27 41. Defendants' failure to furnish Plaintiffs and members of the Wage Statement Class
28 with complete and accurate, itemized wage statements resulted in actual injury, as said failures

1 led to, among other things, the non-payment of all overtime and minimum wages owed and all
2 meal and rest period premium wages owed, and deprived them of the information necessary to
3 identify the discrepancies in Defendants' reported data.

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

8 **SIXTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

11 43. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

12 44. 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 from employment in
14 the 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 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 failed to timely pay Plaintiff Ibarra and members of the Waiting Time Class all final wages due
20 to them at the time of their separation including, among other things, underpaid overtime wages
21 owed, unpaid minimum wages owed, and meal and rest period premium wages. Further, Plaintiffs
22 are informed and believe, and based thereon allege, that as a matter of uniform policy and practice,
23 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
24 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
25 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

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

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(AGAINST ALL DEFENDANTS)**

6 47. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 48. Defendants have engaged, and continue to engage, in unfair and/or unlawful
8 business practices in California in violation of California Business and Professions Code § 17200
9 *et seq.*, by, amongst other things, failing to pay Plaintiffs and the Classes all overtime and
10 minimum wages owed, and failing to pay all required meal and rest period premium wages owed.

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

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

21 51. The acts complained of herein occurred within the last four years immediately
22 preceding the filing this action.

23 52. Plaintiffs were compelled to retain the services of counsel to file this court action
24 to protect their interests and those of the Classes, to obtain restitution and injunctive relief on
25 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
26 the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and
27 costs, which they are entitled to recover under Code of Civil Procedure §1021.5.

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1 **EIGHTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 53. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

22 a. Failing to pay Plaintiffs, and other aggrieved employees all overtime
23 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and
24 1198;

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

28 c. Failing to provide meal periods as required by law and failing to pay meal

1 period premiums to Plaintiffs, and other aggrieved employees at the
2 employees' respective regular rates of compensation for meal period violations
3 in violation Labor Code §§ 226.7, 512, and 558;

4 d. Failing to authorize and permit Plaintiffs, and other aggrieved employees all
5 required rest periods and failing to pay rest period premiums to Plaintiffs, and
6 other aggrieved employees at these employees' respective regular rates of
7 compensation for rest period violations in violation of Labor Code §§ 226.7,
8 516, and 558;

9 e. Failing to furnish Plaintiffs, and other aggrieved employees with accurate and
10 compliant itemized wage statements in violation of Labor Code § 226;

11 f. Failing to timely pay all final wages due to Plaintiff Ibarra and other aggrieved
12 employees in violation of Labor Code §§ 201, 202, and 203;

13 g. Failing to pay Plaintiffs, and other aggrieved employees all wages earned at
14 least twice during each calendar month in violation of Labor Code § 204; and

15 h. Failing to maintain accurate records on behalf of Plaintiffs, and other
16 aggrieved employees in violation of Labor Code §§ 1174 and 1198.

17 55. On or around May 12, 2020, Plaintiffs notified Defendants via certified mail, and
18 notified the California Labor and Workforce Development Agency ("LWDA") via its website, of
19 Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a claim for
20 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
21 California Labor Code identified in Paragraph 54 (a)-(h). Now that sixty-five days have passed
22 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
23 provided notice that it intends to investigate the violations, Plaintiffs have exhausted their
24 administrative requirements for bringing a claim under the Private Attorneys General Act with
25 respect to these violations.

26 56. Based on the foregoing, Plaintiffs seek to represent themselves and all Aggrieved
27 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
28

1 exempt employees who worked for Defendants in California between May 12, 2019 and the
2 present.

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

7 **PRAYER**

8 WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose
9 behalf this suit is brought against Defendants, as follows:

- 10 1. For an order certifying the proposed Classes;
- 11 2. For an order appointing Plaintiffs as representatives of the Classes;
- 12 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
- 13 4. Upon the First Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
16 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
17 1194.2 and 1197;
- 18 6. Upon the Third Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 20 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 22 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
23 226 *et seq.*;
- 24 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
25 Labor Code §§ 201-203;
- 26 10. Upon the Seventh Cause of Action, for restitution to Plaintiffs and members of the
27 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
28 practices declared by this Court to be in violation of California Business and Professions Code §

17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiffs, 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 54 (a)-(h) above.

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: July 17, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiffs

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Dated: July 17, 2020

By:

Fletcher W. Schmidt
Attorneys for Plaintiffs