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KATE MEYER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: B. T. POSE, CLERK

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 37, FOR ALL
PURPOSES

1 HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
2 phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
3 tkorobkin@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
4 amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
5 Tel: (424) 292-2350
Fax: (424) 292-2355

6 Attorneys for Plaintiff

SUMMONS ISSUED

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF CONTRA COSTA

10
11 GEORGE TORRES, as an individual and on
behalf of all others similarly situated,

12
13 Plaintiff,

14 vs.

15 ARCH TELECOM INC., a California
16 corporation; and DOES 1 through 100,

17 Defendants.
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20
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22
23

Case No. C20 - 01679

CLASS AND REPRESENTATIVE
ACTION COMPLAINT:

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§1182.12, 1194,
1194.2, 1197);
- (2) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);
- (3) FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);
- (4) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and
- (5) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

1 Plaintiff George Torres (“Plaintiff”) hereby brings this Class Action Complaint
2 (“Complaint”) against Defendants Arch Telecom Inc., a California corporation; and DOES 1
3 through 100, inclusive (collectively, “Defendants”), and on information and belief alleges as
4 follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under Labor Code §§ 226 *et seq.*, 1182.12,
8 1194, 1194.2, 1197, 2802, 2804, and 2698 *et seq.*, California Business & Professions Code §
9 17200 *et seq.*, and Industrial Welfare Commission Wage Order No. 7 (“Wage Order 7”), in
10 addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
12 of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
23 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
24 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
25 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
26 to him by Labor Code §§ 226 *et seq.*, 1182.12, 1194, 1194.2, 1197, 2802, 2804, 2698 *et seq.*, and
27 Wage Order 7, which sets employment standards for the mercantile industry, which includes any
28

1 “industry, business, or establishment operated for the purpose of purchasing, selling or
2 distributing goods or commodities at wholesale or retail.”

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the time
4 period relevant to this action, Defendants did (and do) business by selling cellular phones, cell
5 phone service plans, and cellphone accessories.

6 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 mentioned herein, Defendants were licensed to do business in California, including, but not
8 limited to, Contra Costa County, and were the employers of Plaintiff and of the members of the
9 Classes (as defined in Paragraph 19).

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

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

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acted within the course
28 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 the
2 Classes (as defined in Paragraph 19).

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff was employed by Defendants as a non-exempt employee in the position
5 of “Sales Associate” from approximately September 2019 until approximately May 2020.

6 10. During Plaintiff’s employment with Defendants, Plaintiff worked over 8.0 hours
7 per workday and/or more than 40.0 hours per workweek but did not receive overtime
8 compensation equal to one and one-half times his regular rate of pay for working overtime hours.
9 Specifically, Defendants paid Plaintiff and other non-exempt employees non-discretionary
10 incentive pay, including but not limited to payments denoted in their wage statements as “Bonus
11 (field 3),” “Contest Payout (field 3),” “Acc & Spif (field 3),” Commission (field 3),” and/or other
12 forms of pay that are not excludable from an employee’s “regular rate” of pay (hereinafter the
13 aforementioned forms of pay are collectively referred to as “Incentive Pay”). However,
14 Defendants failed to properly calculate Plaintiff’s and other non-exempt employees’ regular rates
15 of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the
16 overtime wages owed to them.

17 11. Additionally, Plaintiff and other non-exempt employees were required to attend
18 meetings, which typically took place once or twice per month, and which typically lasted between
19 one and two hours. However, upon information and belief, when these meetings took place
20 outside of Plaintiff’s and other non-exempt employees regularly scheduled hours, Plaintiff and
21 other non-exempt employees were not compensated for time spent attending these meetings.
22 Moreover, when Plaintiff and other non-exempt employees were required to report to work to
23 attend these meetings on their days off, Defendants failed to pay Plaintiff and other non-exempt
24 employees with half their usual or scheduled day’s work (but in no event less than two hours nor
25 more than four hours), at their regular rate of pay in violation of Wage Order 7, § 5 and Labor
26 Code § 1198. As a result, Plaintiff and other non-exempt employees have not been compensated
27 for all hours worked, resulting in unpaid wages.
28

1 12. Plaintiff and other non-exempt employees were not provided with all legally
2 compliant meal periods, because Defendants’ meal period policies/practices failed to provide
3 Plaintiff and other non-exempt employees with a duty-free, timely, and uninterrupted 30-minute
4 meal period before the end of the fifth hour of work and/or a second 30-minute meal period for
5 shifts of over 10.0 hours. Specifically, Defendants impermissibly failed to relieve Plaintiff and
6 other non-exempt employees of all work duties, because upon information and belief, Defendants
7 required Plaintiff and other non-exempt employees to enter on-duty meal period agreements and
8 to continue working when clocked out for a meal period even though the nature of their work did
9 not prevent them from being relieved of all duties for 30-minute intervals. The on-duty meal
10 period agreements were also invalid because they failed to provide for paid meal periods, and
11 were not signed by Defendants, as required by California law. Further, Defendants’ work
12 demands frequently prevented Plaintiff and other non-exempt employees from timely taking a
13 meal period prior to the conclusion of their fifth hour of work. Additionally, upon information
14 and belief, Defendants often shortened Plaintiff’s meal periods by requiring him and other non-
15 exempt employees to return to work prior to the conclusion of their 30-minute meal periods.
16 Moreover, Defendants failed to provide Plaintiff and other non-exempt employees with a second
17 meal period when they worked shifts in excess of 10.0 hours. On occasions where Plaintiff was
18 not provided with all legally-compliant meal periods to which he was entitled, Defendants failed
19 to compensate Plaintiff with the required meal period premiums at his regular rate of pay for each
20 workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.
21 Additionally, upon information and belief, during at least a portion of the class period, Defendants
22 maintained no payroll code or other mechanism for payment of meal period premiums under
23 Labor Code § 226.7 in the event a legally compliant meal period was not provided to their non-
24 exempt employees. Moreover, when Defendants did pay meal period premiums, they failed to
25 pay them at employees’ “regular rate” of compensation because they failed to include the value
26 of Incentive Pay (defined above) when calculating meal period premiums. Instead, Defendants
27 paid meal period premiums at employees’ base rate of pay, rather than their “regular rate” of
28 compensation as required under Labor Code § 226.7.

1 13. Plaintiff and other non-exempt employees were also not authorized and permitted
2 to take all legally compliant rest periods. Upon information and belief, Defendants failed to
3 maintain any legally compliant rest period policy for their non-exempt employees. Rather, upon
4 information and belief, Defendants' work demands often prevented Plaintiff and other non-
5 exempt employees from being relieved of all work duties, and as a result, they were often required
6 to work through their rest periods. Further, Defendants also failed to authorize and permit Plaintiff
7 and other non-exempt employees to take a second and/or a third rest period on occasions when
8 they worked over 6.0 hours and/or over 10.0 hours in a workday. Moreover, Plaintiff's and other
9 non-exempt employees' rest periods were often "short," because Defendants often required them
10 to return to work prior to the conclusion of their 10-minute rest periods. Despite failing to
11 authorize and permit rest periods as required under California law, Defendants failed to pay
12 Plaintiff and other non-exempt employees one hour of rest period premium for each day they
13 experienced a rest period violation as required by Labor Code Section 226.7. Defendants also
14 failed to maintain a mechanism for payment of rest period premium payments as required by
15 Labor Code Section 226.7.

16 14. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
17 all reasonable and necessary work expenditures, including but not limited to the use of personal
18 cell phones to communicate with management for work-related purposes. Although Defendants
19 required Plaintiff and other non-exempt employees to use their personal cell phones for work-
20 related purposes (for example, to check in with management), Defendants failed to reimburse
21 Plaintiff and other non-exempt employees for a reasonable portion of their monthly cell phone
22 bill, in violation of California law. *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th
23 1137 (2014).

24 15. Defendants also failed to provide adequate seating for Plaintiff and other non-
25 exempt employees. Defendants threatened Plaintiff and other non-exempt employees with
26 discipline for sitting in seats that were designated for customers and did not provide suitable
27 seating for non-exempt employees during the time that they spent working.

28 16. As a result of Defendants' failure to pay all required overtime and minimum wages

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

17. Defendants also issued facially deficient wage statements that failed to include all applicable hourly rates of pay and the corresponding number of hours worked at each rate. Specifically, on many wage statements during the relevant time period, Defendants included payments for “Overtime 1.5” but failed to include an hourly rate or a corresponding number of hours worked for those payments in violation of Labor Code § 226(a)(9).

18. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days are suspended from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for each cause of action pled herein have been calculated based on a filing date of April 6, 2020.

CLASS ACTION ALLEGATIONS

19. Class Definitions: Plaintiff brings this Complaint on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of Defendants’ current and former non-exempt employees in California who was required to attended at least one work meeting, during the period of April 6, 2016 through the present.

b. The Wage Statement Class consists of: (i) all of Defendants’ current and former non-exempt employees in California who worked over 8 hours in a workday and/or over 40 hours in a workweek and received Incentive Pay from Defendants; (ii) all of Defendants’ current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours and/or worked at least one shift in excess of 10.0 hours; (iii) all of Defendants’ current and former non-exempt employees in California worked at least one shift in of 3.5 hours or more; (iv) all of Defendants’ current and former non-exempt employees in California who received payment noted as “Overtime 1.5” on their wage statement; and/or (v) all members of the Minimum Wage Class who received a wage statement from

Defendants, during the period of April 6, 2019 through the present.

- c. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who used their personal cell phones, or other equipment in connection with their job duties, during the period of April 6, 2016 through the present.

20. **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 is in excess of 100 individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **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 members including, without limitation, to:

- i. Whether Defendants paid all minimum wages owed to members of the Minimum Wage Class for all hours worked pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;
- ii. Whether Defendants furnished legally-compliant wage statements to Plaintiff and members of the Wage Statement Class pursuant to Labor Code § 226; and
- iii. Whether Defendants' reimbursement policies, and failure to reimburse Plaintiff and members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties, comply with Labor Code § 2802.

22. **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 including but not limited to Defendants' uniform policies and/or practices related to minimum wage, reporting time

1 policies/practices, policies/practices related to reimbursement for necessary business
2 expenditures, and wage statements policies/practices. As such, the common questions
3 predominate over individual questions concerning each individual class member's showing as to
4 his or her eligibility for recovery or as to the amount of his or her damages.

5 **23. Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
6 Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes
7 of limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff,
8 like the members of the Classes, was deprived of all minimum wages owed, was not paid all
9 reporting time pay, did not receive reimbursements for necessary business expenditures, and did
10 not receive accurate itemized wage statements.

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

17 **25. Superiority:** The California Labor Code is broadly remedial in nature and serves
18 an important public interest in establishing minimum working conditions and standards in
19 California. These laws and labor standards protect the average working employee from
20 exploitation by employers who have the responsibility to follow the laws and who may seek to
21 take advantage of superior economic and bargaining power in setting onerous terms and
22 conditions of employment. The nature of this action and the format of laws available to Plaintiff
23 and members of the Classes make the class action format a particularly efficient and appropriate
24 procedure to redress the violations alleged herein. If each employee were required to file an
25 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
26 would be able to exploit and overwhelm the limited resources of each individual Class Member
27 with their vastly superior financial and legal resources. Moreover, requiring each member of the
28 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current employer
2 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
3 employment. Further, the prosecution of separate actions by the individual class members, even
4 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
5 with respect to the individual class members against Defendants herein; and which would
6 establish potentially incompatible standards of conduct for Defendants; and/or legal
7 determinations with respect to individual class members which would, as a practical matter, be
8 dispositive of the interest of the other class members not parties to adjudications or which would
9 substantially impair or impede the ability of the class members to protect their interests. Further,
10 the claims of the individual members of the class are not sufficiently large to warrant vigorous
11 individual prosecution considering all of the concomitant costs and expenses attending thereto.

12 26. As such, the Classes identified in Paragraph 19 are maintainable as a Class under
13 Section 382 of the Code of Civil Procedure.

14 **FIRST CAUSE OF ACTION**

15 **MINIMUM WAGE VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

18 28. Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
19 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
20 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
21 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
22 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
23 wages and interest accrued thereon.

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

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

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

11 32. The foregoing practices and policies are unlawful and create an entitlement to
12 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
13 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
14 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
15 1194, 1197, and 1198, Wage Order 7, and Code of Civil Procedure § 1021.5.

16 **SECOND CAUSE OF ACTION**

17 **WAGE STATEMENT VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
22 and members of the Wage Statement Class with complete and accurate wage statements that
23 included, among other requirements, all overtime and minimum wages earned, and all meal and
24 rest period premium wages owed, and all applicable hourly rates in effect during the pay period
25 and the corresponding number of hours worked at each hourly rate by the employee in violation
26 of Labor Code sections 226 *et seq.*

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

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

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

10 **(AGAINST ALL DEFENDANTS)**

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

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

16 39. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
17 states that "any contract or agreement, express or implied, made by any employee to waive the
18 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
19 employee or his personal representative of any right or remedy to which he is entitled under the
20 laws of this State."

21 40. Due to Defendants' unlawful policy and practice of requiring employees to use
22 their personal equipment, vehicles, and/or personal cellular phones for work purposes, and failing
23 to pay reimbursements to Plaintiff and members of the Employee Expense Class, Defendants have
24 violated Labor Code §2802.

25 41. As a proximate result of Defendants' policies and/or practices in violation of Labor
26 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages
27 in sums, which will be shown according to proof.

28 42. Plaintiff and members of the Employee Expense Class are entitled to attorneys'

1 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

2 43. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
3 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
4 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
5 from the date on which they incurred the initial necessary expenditure.

6 **FOURTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(AGAINST ALL DEFENDANTS)**

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

10 45. Defendants have engaged and continue to engage in unfair and/or unlawful
11 business practices in California in violation of Business and Professions Code § 17200 *et seq.* by
12 amongst other things, failing to pay Plaintiff and the Classes all minimum wages owed; failing to
13 pay all required reporting time pay; failing to reimburse all necessary business expenditures; and
14 knowingly failing to furnish accurate and complete itemized wage statements in violation of
15 Labor Code § 226.

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

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

25 48. The acts complained of herein occurred within the last four years immediately
26 preceding April 6, 2020, the date on which Judicial Council Emergency Rule 9 suspended the
27 statute of limitations for civil causes of action that exceed 180 days.

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

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

5 **FIFTH CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(AGAINST ALL DEFENDANTS)**

8 50. Plaintiff re-allege and incorporate by reference all previous paragraphs.

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

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

28 b. Failing to pay Plaintiff and other aggrieved employees all overtime

1 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and
2 1198;

3 c. Failing to provide meal periods as required by law and failing to pay meal
4 period premiums to Plaintiff and other aggrieved employees at the employees'
5 respective regular rates of compensation for meal period violations in violation
6 of Labor Code §§ 226.7, 512, and 558;

7 d. Failing to authorize and permit Plaintiff and other aggrieved employees all
8 required rest periods and failing to pay rest period premiums to Plaintiff and
9 other aggrieved employees at these employees' respective regular rates of
10 compensation for rest period violations in violation of Labor Code §§ 226.7,
11 516, and 558;

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

14 f. Failing to furnish Plaintiff and other aggrieved employees with accurate and
15 compliant itemized wage statements in violation of Labor Code § 226;

16 g. failing to reimburse Plaintiff and other aggrieved employees for all necessary
17 business expenditures incurred in violation of Labor Code §§ 1198, 2802, and
18 2804;

19 h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least
20 twice during each calendar month in violation Labor Code § 204;

21 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
22 employees in violation of Labor Code §§ 1174 and 1198; and

23 j. Failing to provide suitable seats to Plaintiff and other aggrieved employees in
24 violation of Labor Code § 1198.

25 52. On or around June 2, 2020 Plaintiff notified Defendants via certified mail, and
26 notified the California Labor and Workforce Development Agency ("LWDA") via its website, of
27 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
28 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
California Labor Code identified in Paragraph 51 (a)-(j). Now that sixty-five days have passed

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

5 53. 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 6, 2019 and the
8 present.

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

13 **PRAYER**

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

- 16 1. For an order certifying the proposed Classes;
- 17 2. For an order appointing Plaintiff as representative of the Classes;
- 18 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 19 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
20 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
21 1197;
- 22 5. Upon the Second Cause of Action, for statutory penalties pursuant to Labor Code
23 section 226 *et. seq.*;
- 24 6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code
25 §§ 2802 and 2804;
- 26 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and members of the
27 Class 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 Business and Professions Code § 17200 *et*

1 *seq.;*

2 8. Upon the Fifth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
3 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
4 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
5 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
6 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
7 unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
8 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
9 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
10 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
11 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
12 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
13 those violations of the Labor Code for which no civil penalty is specifically provided, based on
14 the violations of Labor Code sections identified in Paragraph 51 (a)-(j) above.

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

17 10. On all causes of action, for attorneys' fees and costs, pursuant to Labor Code §§
18 226(e), 1194, 2802(c), and 2699(g), and Code of Civil Procedure § 1021.5; and

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

20
21 Dated: August 25, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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23 By:



Paul K. Haines
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: August 25, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff