

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Mossamat N. Karim (SBN 329711)
nkarim@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

Assigned for All Purposes

Judge William Cluster

CX-104

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ADRIAN VIDES, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

CELOSEAL ROOFING, INC., a California
corporation; and DOES 1 through 100, inclusive

Defendants.

Case No. 30-2020-01162478-CU-OE-CXC

CLASS ACTION COMPLAINT:

- (1) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);**
- (2) FAILURE TO PAY ALL MINIMUM WAGES (LABOR CODE §§ 1194, 1194.2, 1197);**
- (3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 558);**
- (4) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES (LABOR CODE § 2802);**
- (5) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226 et seq.);**
- (6) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200); and**
- (8) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, et seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Adrian Vides (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this Class Action and Representative Action Complaint (“Complaint”) against Defendants Celoseal Roofing, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this lawsuit for recovery of unpaid wages and penalties under Bus. & Prof. Code § 17200; Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage Order No. 16 (“Wage Order 16”), 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 as to each Defendant 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 Orange. Further, at all times relevant herein Defendants maintained offices and conducted business within the County of Orange.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident. During the four years immediately preceding the filing of this lawsuit and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as an hourly employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Wage Order 16, which sets employment standards for occupations in the construction industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that between April
2 6, 2016, and continuing to the present, Defendants did (and do) business as a construction
3 company specializing in commercial and residential decking, roofing, and waterproofing services
4 in the County of Orange and State of California, and employed Plaintiff in the State of California,
5 and, therefore, were (and are) doing business in the County of Orange and the State of California.

6 5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
7 herein, Defendants were licensed to do business in California and the County of Orange and were
8 the employers of Plaintiff and the Class Members (as defined in Paragraph 18).

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

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

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28

Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 18).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was hired by Defendants in approximately 1999 and remained employed until approximately March 2020 as a non-exempt “Foreman” and/or “Forklift Driver” (or similarly titled positions). Unless otherwise specified, all allegations herein occurred during Plaintiff’s employment with Defendants.

10. Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by non-exempt employees in Defendants’ favor, which resulted, over a period of time, in the failure to properly compensate them, including Plaintiff, for all hours worked, thereby depriving them of all required minimum and overtime wages earned. Specifically, Defendants’ timekeeping mechanism failed to pay Plaintiff and other non-exempt employees for all hours that they worked “on-the-clock,” whether by rounding and/or truncating of hours. Further, Defendants’ rounding mechanism was not even-handed over time, as is required to be lawful.

11. Throughout Plaintiff’s employment with the Defendants, Defendants failed to ensure that Plaintiff and other non-exempt employees were compensated with required meal period premiums in the event that they did not receive compliant meal periods. Specifically, Defendants did not record the beginning or end of employees’ meal periods and instead automatically deducted thirty minutes of time from their daily recorded hours worked. As a result, Defendants failed to pay Plaintiff and other non-exempt employees the required meal period premiums in the event that an employee did not receive a timely, 30-minute meal period. Furthermore, Defendants’ failure to record the beginning and end of meal periods is not excused by Section 6(A)(1) of Wage Order 16, because Defendants failed to cease operations during meal periods. Additionally, Defendants’ automatic deduction policy resulted in wage theft in any instance where an employee did not receive a full meal period, as they had 30 minutes of time automatically deducted from their pay despite not being off of work for this entire period of time.

1 12. In addition to the first meal period violation described *supra*, when Plaintiff
2 worked shifts in excess of 10.0 hours, Plaintiff was not provided a second meal period due to
3 Defendants' meal period policies/practices which do not provide a second meal period for shifts
4 in excess of 10.0 hours.

5 13. Although Plaintiff was not provided with all legally compliant meal periods to
6 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
7 premium for each workday in which he experienced a meal period violation as mandated by Labor
8 Code § 226.7. Upon information and belief during at least a portion of the relevant time period,
9 Defendants maintained no payroll code or other mechanism for the payment of meal period
10 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
11 was not provided to their non-exempt employees.

12 14. Defendants failed to reimburse Plaintiff for all reasonable and necessary work
13 expenditures, including but not limited to the use of his personal cell phone for work-related
14 purposes. Specifically, Plaintiff was required to download a smartphone application on his
15 personal cell phone which Defendants used for employee timekeeping, and was also required to
16 use his personal cell phone for other work-related tasks, including navigation while driving
17 company vehicles, and communicating with supervisors. Although Plaintiff was required to use
18 his personal cell phone and data plan for these work-related tasks, Defendants failed to reimburse
19 Plaintiff for a reasonable portion of his monthly cellular phone bill, in violation of California law.
20 *See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding that
21 employers must reimburse employees for a reasonable portion their cellular phone bill when
22 personal cellular phone use is required for work-related purposes).

23 15. Defendant is governed by Labor Code Section 226(a)(8), which requires
24 Defendants' wage statements to include the name and address of the legal entity of the employer.
25 Defendants have failed to comply with the requirement by failing to specify the complete address
26 of the legal entity that is the employer. As a result, Defendants' wage statements are facially
27 deficient, in violation of Labor Code Section 226.

1 16. As a result of Defendants' failure to pay all overtime and minimum wages as well
2 as meal period premium wages, Defendants maintained inaccurate payroll records, issued
3 inaccurate wage statements, and failed to pay Plaintiff and other former non-exempt employees
4 all wages due at the time of their separation of employment.

5 17. Pursuant to the California Emergency Rules Related to COVID-19, the statute of
6 limitations for the causes of action alleged in this lawsuit were tolled as of April 6, 2020. *See*
7 Emergency Rule 9(a) ("Notwithstanding any other law, the statutes of limitations and repose for
8 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.")

9 **CLASS ACTION ALLEGATIONS**

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

- 12 a. The Overtime Class consists of all of Defendants' current and former non-exempt
13 employees in California who worked in excess of eight hours in a workday and/or
14 in excess of 40 hours in a workweek and were subject to Defendants' timekeeping
15 policies and/or practices (including Defendants' automatic meal deduction
16 practices), from April 6, 2016, through the present date.
- 17 b. The Minimum Wage Class consists of all of Defendants' current and former non-
18 exempt employees in California who were subject to Defendants' timekeeping
19 policies and/or practices (including Defendants' automatic meal deduction
20 practices), from April 6, 2016, through the present date.
- 21 c. The Meal Period Class consists of all of Defendants' current and former non-
22 exempt employees in California who: (i) worked at least one shift in excess of 5.0
23 hours without a recorded meal period of at least 30-minutes commencing before
24 the end of the fifth hour of work; and/or (ii) worked at least one shift in excess of
25 10.0 hours without a recorded second meal period of at least 30-minutes
26 commencing before the end of the tenth hour of work, from April 6, 2016, through
27 the present date.
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- d. The Reimbursement Class: all of Defendants' current and former non-exempt employees in California who were subject to Defendants' cell phone reimbursement policies/practices, from April 6, 2016, through the present date.
- e. The Wage Statement Class consists of: (i) all members of the Overtime Class, Minimum Wage Class, and/or Meal Period Class; and/or (ii) all employees who received a wage statement that did not include the complete address of the employer from April 6, 2019, through the present date.
- f. The Waiting Time Class consists of all members of the (i) Overtime Class; (ii) Minimum Wage Class; and/or (iii) Meal Period Class, who separated their employment from Defendants from April 6, 2017, through the present date.

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than sixty (60) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants properly paid all overtime wages to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- ii. Whether Defendants properly paid all minimum wages to members of the Minimum Wage Class pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197 and 1198;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants properly reimbursed the members of the Reimbursement Class for all necessary business expenses incurred;

- 1 v. Whether Defendants furnished legally compliant wage statements to members of
2 the Wage Statement Class pursuant to Labor Code 226;
3 vi. Whether Defendants' policies and/or practices for the timing and payment of final
4 wages to members of the Waiting Time Class were unlawful; and
5 vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
6 business practices by and through the wage and hour policies and practices
7 described above, and whether as a result Defendants owe the classes restitution.

8 21. **Predominance of Common Questions:** Common questions of law and fact
9 predominate over questions that affect only individual members of the Classes. The common
10 questions of law set forth above are numerous and substantial and stem from Defendants' policies
11 and/or practices applicable to each individual class member, such as Defendants' uniform method
12 of calculating the regular rate of pay, as well as uniform time shaving, meal and rest period, and
13 reimbursement policies/practices. As such, the common questions predominate over individual
14 questions concerning each individual class member's showing as to his or her eligibility for
15 recovery or as to the amount of his or her damages.

16 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
17 Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes
18 of limitation applicable to each cause of action pled in this lawsuit. As alleged herein, Plaintiff,
19 like the members of the Classes, was deprived of all overtime and minimum wages, was not
20 provided all legally required meal periods, was not reimbursed for necessary business
21 expenditures, was furnished with inaccurate and incomplete wage statements, and was not paid
22 all final wages upon his separation of employment.

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

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

24 25. As such, each of the Classes identified in Paragraph 18 is maintainable as a Class
25 under § 382 of the Code of Civil Procedure.

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

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

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

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

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

30. Defendants’ policy and practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 510, 558, 1194, and 1198, and IWC Wage Order 16.

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

6 **SECOND CAUSE OF ACTION**

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

8 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

1 36. The foregoing practices and policies are unlawful and create entitlement to
2 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
3 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
4 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
5 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 16, California Code
6 of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§
7 3287(b) and 3289.

8 **THIRD CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

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

17 39. As a result, Defendants are responsible for paying premium compensation for meal
18 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
19 Wage Order 16, Labor Code §§ 226.7, 512, and 558, and Civil Code §§ 3287(b) and 3289.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES**

22 **(AGAINST ALL DEFENDANTS)**

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

25 41. As alleged herein, Defendants required Plaintiff and members of the
26 Reimbursement Class to use their personal cell phones for business purposes but failed to provide
27 adequate reimbursement for this activity.

1 42. At all relevant times herein, Defendants were subject to Cal. Labor Code § 2802,
2 which states that “an employer shall indemnify his or her employees for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
4 her duties, or of his or obedience to the directions of the employer.”

5 43. At all relevant times herein, Defendants were subject to Cal. Labor Code § 2804,
6 which states that “any contract or agreement, express or implied, made by any employee to waive
7 the benefits of this article or any part thereof, is null and void, and this article shall not deprive
8 any employee or his personal representative of any right or remedy to which he is entitled under
9 the laws of this State.”

10 44. As a proximate result of Defendants’ policies and/or practices in violation of Cal.
11 Labor Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class were damaged
12 in sums, which will be shown according to proof.

13 45. Plaintiff and members of the Reimbursement Class are entitled to attorneys’ fees
14 and costs of suit pursuant to Cal. Labor Code § 2802(c) for bringing this action.

15 46. Pursuant to Cal. Labor Code § 2802(b), any action brought for the reimbursement
16 of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
17 Plaintiff and members of the Reimbursement Class are entitled to interest, which shall accrue
18 from the date on which they incurred the necessary expenditure.

19 **FIFTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

24 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
26 and members of the Wage Statement Class with accurate and complete wage statements in
27 violation of Labor Code § 226.
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1 49. Defendants issued Plaintiff and members of the Wage Statement Class facially
2 deficient wage statements that failed to include the complete address of the legal entity that is the
3 employer in violation of Labor Code § 226(a)(8). Additionally, Defendants' failure to furnish
4 Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage
5 statements resulted in injury, as said failures led to, among other things, the non-payment of all
6 their overtime and minimum wages as well as meal period premium wages and deprived them of
7 the information necessary to identify the discrepancies in Defendants' reported data.

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

12 **SIXTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

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

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

23 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
25 at their separation from employment, including, unpaid overtime and minimum wages as well as
26 meal period premium wages.

27 54. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
28 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members

1 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
2 to the requirements of Labor Code §§ 201-203.

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

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

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(AGAINST ALL DEFENDANTS)**

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

14 58. Defendants have engaged and continue to engage in unfair and/or unlawful
15 business practices in California in violation of California Business & Professions Code § 17200
16 by failing to pay Plaintiff and the Classes all overtime and minimum wages, failing to provide all
17 required meal periods, failure to reimburse for necessary business expenditures, issuing
18 inaccurate wage statements, and failing to pay all final wages owed upon separation of
19 employment.

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

25 60. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
26 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
27 monies, as necessary and according to proof, to restore all monies withheld, acquired, and/or
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converted by Defendants pursuant to California Business & Professions Code §§ 17203 and 17208.

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

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

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

64. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* ("PAGA"), acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (h) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 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 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 of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code

for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to compensate aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to compensate aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197 and 1198;
- c. Failing to provide aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to reimburse aggrieved employees for all necessary business expenses in violation of Labor Code §§ 1198, 2802 and 2804;
- e. Failing to furnish accurate itemized wage statements to aggrieved employees, in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by aggrieved employees at the time of separation in violation of Labor Code §§ 201- 203;
- g. Failing to pay aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of aggrieved employees in violation of Labor Code § 1174.

65. On or around July 22, 2020, Plaintiff notified Celoseal Roofing, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Plaintiff's counsel as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action for statutory waiting time penalties pursuant to Labor Code § 203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§

558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226 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 cited in Paragraph 64 (a)-(h);

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

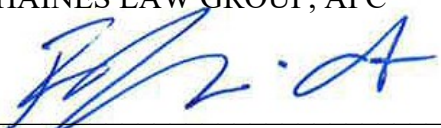
13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: September 28, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: September 28, 2020

HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorneys for Plaintiff