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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**
13 **UNLIMITED JURISDICTION**

14
15 ROY WITTBECKER, on behalf of himself,
16 and all others similarly situated, and the
general public

17 *Plaintiff,*

18 vs.

19 CUPERTINO ELECTRIC, INC., a Delaware
20 corporation; and DOES 1 through 50,
inclusive,

21 *Defendants.*

Case No. **20CV371987**

COMPLAINT

1. Civil Penalties (Lab. Code §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff ROY WITTBECKER ("Plaintiff"), on behalf of himself, other aggrieved
2 employees, and the State of California complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against Defendant CUPERTINO
5 ELECTRIC, INC., a Delaware corporation; and DOES 1 through 50, inclusive (collectively referred
6 to as "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges
7 that Defendants have

- 8 (1) failed to provide him and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the
13 regular rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to pay all wages on semimonthly and/or biweekly basis;
- 20 (10) failed to pay them for all vested vacation pay;
- 21 (11) failed to reimburse them for all necessary business expenses;
- 22 (12) failed to provide them with accurate written wage statements; and
- 23 (13) failed to pay them all of their final wages following separation of
24 employment.

25 Based on these alleged Labor Code violations herein, Plaintiff now brings this representative
26 action to recover civil and statutory penalties and related relief on behalf of himself, all other
27 aggrieved employees, and the State of California.

28 ///

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction to hear this case because the penalties
3 sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction of the Superior Court
4 of the State of California.

5 3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure
6 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
7 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
8 maintains offices, transacts business and/or has an agent therein.

9 **PARTIES**

10 4. Plaintiff ROY WITTBECKER is, and at all relevant times mentioned herein, an
11 individual residing in the State of California, and at all times alleged was an "aggrieved" employee
12 of Defendants.

13 5. Plaintiff is informed and believes, and thereupon alleges that Defendant
14 CUPERTINO ELECTRIC, INC. is, and at all relevant times mentioned herein, a Delaware
15 corporation doing business in the State of California.

16 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
17 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
18 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
19 when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the
20 fictitiously named defendants are responsible in some manner for the occurrences, acts and
21 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
22 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
23 capacities of the DOE defendants when ascertained.

24 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
25 mentioned herein, some or all of the defendants were the representatives, agents, employees,
26 partners, directors, associates, joint venturers, joint employers, principals or co-participants of some
27 or all of the other defendants, and in doing the things alleged herein, were acting within the course
28 and scope of such relationship and with the full knowledge, consent and ratification by such other

1 defendants.

2 8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
3 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert
4 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
5 acts and omissions alleged herein.

6 **GENERAL ALLEGATIONS**

7 9. Plaintiff worked for Defendants as a non-exempt, hourly employee from
8 approximately March 6, 2019 until July 8, 2019.

9 **Missed Meal Periods**

10 10. Plaintiff and the aggrieved employees were not provided with meal periods of at
11 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
12 scheduling each meal period as part of each work shift; (2) requiring Plaintiff and the aggrieved
13 employees to travel to and from job sites; (3) imposing so much work on each employee such that
14 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
15 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
16 take their meal and rest periods, or advised them of their meal and rest period rights.

17 11. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
18 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
19 (5) hours worked due to the lack of Defendants' policies, and complying with Defendants'
20 productivity requirements that required Plaintiff and aggrieved employees to work through their
21 meal periods in order to complete their assignments on time.

22 **Missed Rest Periods**

23 12. Plaintiff and the aggrieved employees were not provided with rest periods of at least
24 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
25 Defendants' policy of not scheduling each rest period as part of each work shift; (2) requiring
26 Plaintiff and the aggrieved employees to travel to and from job sites; (3) imposing so much work
27 on each employee such that it made it unlikely that an employee would be able to take their breaks
28 if they wanted to finish their work on time; and (4) no formal written meal and rest period policy

1 that encouraged employees to take their meal and rest periods, or advised them of their meal and
2 rest period rights.

3 13. Plaintiff and the aggrieved employees were regularly not provided with
4 uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked due to
5 complying with Defendants' productivity requirements that required Plaintiff and the aggrieved
6 employees to work through their rest periods in order to complete their assignments on time.

7 **Vacation Pay**

8 14. Plaintiff and the aggrieved employees accrued vacation wages during their
9 employment with Defendants.

10 15. Under California law, vacation wages are considered a form of wages under Labor
11 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on
12 labor performed are considered wages that cannot be subject to forfeiture without compensation for
13 forfeited days at the applicable rates required by law.

14 16. At all relevant times, Defendants maintained policies that provide for the unlawful
15 forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic*
16 *Dress-Up Co.*, (1982) 31 Cal. 3d 774.

17 17. Plaintiff and the aggrieved employees are entitled to vacation accrued during their
18 employment with Defendants. Upon termination, Plaintiff and the aggrieved employees were not
19 paid out all accrued vacation pay.

20 **Expense Reimbursement**

21 18. Plaintiff and the aggrieved employees were required to utilize their own personal
22 tools to perform their job duties. Specifically, Plaintiff and aggrieved employees were required to
23 purchase equipment for testing trailer lights, torque wrenches, and other tools pertaining to
24 diagnosing and repairing Defendants' vehicles for which they were never reimbursed.

25 19. In addition, Plaintiff and the aggrieved employees were not paid at least two times
26 the minimum wage for all hours worked.

27 20. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
28 necessary business expenses incurred by them.

1 **Wage Statements**

2 21. Plaintiff and the aggrieved employees were not provided with accurate wage
3 statements as mandated by law pursuant to Labor Code section 226.

4 22. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
5 earned” were not accurately reflected in that: all hours worked, including overtime, were not
6 included.

7 23. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
8 worked by the employee” were not accurately reflected in that: all hours worked, including
9 overtime, were not included.

10 24. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
11 earned” were not accurately reflected in that: all hours worked, including overtime, were not
12 included.

13 25. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
16 overtime, were not included.

17 **FIRST CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code §§ 2698 *et seq.*)**

20 26. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 27. During the applicable limitations period, Defendants have violated Labor Code
23 sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1198 and
24 2802.

25 28. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
26 themself and other current and former employees, to bring a representative civil action to recover
27 civil penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need
28 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

1 29. Plaintiff, a former employee against who Defendants committed one or more of the
2 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
3 within the meaning of Labor Code section 2699(c).

4 30. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
5 section 2699.3.

6 31. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
7 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
8 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- 9 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 227.3, 1194,
10 1198 and 2802, \$100 for each employee per pay period for each initial
11 violation and \$200 for each employee per pay period for each subsequent
12 violation (penalties set by Labor Code section 2699(f)(2));
- 13 B. For violations of Labor Code section 201, 202, and 203, for Plaintiff and each
14 formerly employed aggrieved employee;
- 15 C. For violations of Labor Code section 204, \$100 for each employee for each
16 initial violation that was neither willful nor intentional, \$200 for each
17 employee, plus 25% of the amount unlawfully withheld from each employee,
18 for each initial violation that was either willful or intentional, and \$200 for
19 each employee, plus 25% of the amount unlawfully withheld from each
20 employee, for each subsequent violation, regardless of whether the
21 subsequent violation was either willful or intentional (penalties set by Labor
22 Code section 210);
- 23 D. For violations of Labor Code section 223, \$100 for each employee for each
24 initial violation that was neither willful nor intentional, \$200 for each
25 employee, plus 25% of the amount unlawfully withheld from each employee,
26 for each initial violation that was either willful or intentional, and \$200 for
27 each employee, plus 25% of the amount unlawfully withheld from each
28 employee, for each subsequent violation, regardless of whether the

subsequent violation was either willful or intentional (penalties set by Labor Code section 225.5);

E. For violations of Labor Code section 226(a), if this action is deemed to be an initial citation, \$250 for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, \$1,000 for each employee for each violation (penalties set by Labor Code section 226.3);

F. For violation of Labor Code sections 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code section 558);

G. For violations of Labor Code section 1197, \$100 for each aggrieved employee for each initial violation of Labor Code section 1197 that was intentional, and \$250 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code section 1197.1);

32. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) Pre-judgment interest;
- (2) Statutory penalties;
- (3) Costs of suit;
- (4) Civil penalties;
- (5) Reasonable attorneys' fees; and
- (6) Such other relief as the Court deems just and proper.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of himself, all aggrieved employees, and the State of California, hereby
3 demands a jury trial on all issues so triable.
4

5 Dated: October 23, 2020

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