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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 27 2020

BY Nicole Cartwright
NICOLE CARTWRIGHT, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

VICTOR M. NEGRETE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CREATIVE STONE MFG., INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. CIVDS2018095

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **UNLAWFUL DEDUCTIONS
FROM EARNED WAGES
(LABOR CODE §§ 221-223);**
- (6) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203); and**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

**(9) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Victor M. Negrete (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Creative Stone MFG., Inc., a California Corporation, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*; and Industrial Welfare Commission Wage Order
11 1 (“Wage Order 1”), in addition to seeking injunctive relief, declaratory relief and restitution.

12 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
13 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits
14 of the Superior Court and will be established according to proof at trial.

15 3. This Court has jurisdiction over Defendants because, upon information and belief,
16 Defendants have sufficient minimum contacts in California, or otherwise intentionally avails
17 itself/themselves to the California market so as to render the exercise of jurisdiction over it/them
18 by the California courts consistent with the traditional notions of fair play and substantial justice.

19 **VENUE**

20 4. Venue is proper in this judicial district pursuant to California Code of Civil
21 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
22 occurred in the County of San Bernardino. Defendants own, maintain offices, transact business,
23 have an agent or agents within the County of San Bernardino, and/or otherwise are found within
24 the County of San Bernardino, and Defendants are within the jurisdiction of this Court for
25 purposes of service of process.

26 **PARTIES**

27 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
28 Plaintiff was and currently is, a California resident. Within the statute of limitations periods

1 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
2 exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
3 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
4 by Labor Code §§ 201-204, 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194,
5 1194.2, 1197, 1198, 2698 *et seq.*; California Business and Professions Code § 17200 *et seq.*
6 ("Unfair Competition Law"), and Wage Order 1, which sets employment standards for the
7 manufacturing industry.

8 6. Plaintiff is informed and believes, and based thereon alleges, that during the time
9 period relevant to this action, Defendants did (and continue to do) business manufacturing stone
10 products and employed Plaintiff and other, similarly-situated non-exempt employees within San
11 Bernardino County and the State of California and, therefore, were (and are) doing business in
12 San Bernardino County and the State of California.

13 7. Plaintiff does not know the true names or capacities, whether individual, partner,
14 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
15 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
16 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
17 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
18 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
19 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
20 unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

omissions complained of herein.

10. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

11. Plaintiff was employed by Defendants as a non-exempt employee in the position of “Mechanic” and/or “Electrician” (or similarly titled position) from approximately September 2018 until approximately October 2020.

12. During Plaintiff’s employment with Defendants, Defendants maintained an unlawful timekeeping policy/practice that failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by Plaintiff and non-exempt employees by maintaining a policy/practice that rounded Plaintiff’s and other non-exempt employees’ timekeeping entries in 15-minute increments, which resulted, over a period of time, in Defendants’ failure to properly compensate Plaintiff and other non-exempt employees for all hours worked, and deprived them of all minimum and overtime wages earned. Furthermore, upon information and belief, Defendants failed to pay all minimum and overtime wages as a result of an unlawful one-way deductions that would occur in the event that an employee arrived 15-minutes after the scheduled start of shift, in which case Defendants deducted earned wages from Plaintiff and other non-exempt employees. As a result of Defendants’ unlawful one-way deductions, Defendants failed to pay all minimum and overtime wages to Plaintiff and other non-exempt employees.

13. Defendants failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods of at least 30-minutes commencing before the conclusion of the fifth hour of work and/or a second meal period when they worked shifts in excess of 10.0 hours. Although Plaintiff’s shift regularly began at 5:00 a.m., and occasionally began as early as 4:00

1 a.m., Plaintiff was not provided with a meal period until 10:30 a.m., after the conclusion of
2 Plaintiff's fifth hour of work. Additionally, Defendants' meal period policies/practices do not
3 provide for a second meal period for shifts in excess of 10.0 hours, nor were Plaintiff and other
4 non-exempt employees provided with a second meal period for shifts over 10.0 hours. Moreover,
5 Defendants do not keep accurate records of Plaintiff's and other non-exempt employees' hours
6 worked, including time records showing when employees take their meal periods. Although
7 Defendants do not cease operations during meal periods, Defendants do not require Plaintiff and
8 other non-exempt employees to clock out and in for their meal periods, and maintain no other
9 records of employee meal periods. Instead, Defendants automatically deduct 30-minutes from
10 employee time records each work shift regardless of whether an employee took a 30-minute
11 compliant meal period. In the event that a legally compliant meal period was not in fact provided,
12 Plaintiff and other non-exempt employees were not paid the meal period premium required by
13 Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class
14 period, Defendants maintained no payroll code or other mechanism for paying meal period
15 premiums when Defendants failed to provide a legally compliant meal period to Plaintiff and
16 other non-exempt employees.

17 14. Plaintiff and other non-exempt employees were not authorized and permitted to
18 take all required rest periods due to Defendants' rest period policies/practices, which upon
19 information and belief, fail to authorize and permit all rest periods for every four hours worked,
20 or major fraction thereof. Specifically, during Plaintiff's employment with Defendants,
21 Defendants only authorized and permitted Plaintiff and other non-exempt employees who worked
22 shifts of at least eight hours to take one 20-minute combined rest period in the morning.
23 Defendants' departure from the preferred rest period schedule for an 8-hour shift, i.e., one rest
24 period falling on either side of the meal period, is unlawful and not permissible. *See Rodriguez*
25 *v. E.M.E., Inc.*, 246 Cal.App.4th 1027 ("[A] departure from the preferred schedule is permissible
26 only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate
27 a material burden that would be imposed on the employer by implementing the preferred
28 schedule."). Defendants also failed to authorize and permit Plaintiff and other non-exempt

employees to take a third rest period on occasions when they worked over 10.0 hours in a workday. Despite failing to authorize and permit rest periods as required under California law, Defendants failed to pay Plaintiff and other non-exempt employees one hour of rest period premium for each day they experienced a rest period violation as required by Labor Code Section 226.7. Upon information and belief, Defendants also failed to maintain a mechanism for payment of rest period premium payments as required by Labor Code Section 226.7.

15. As a result of Defendants' failure to pay all minimum and overtime wages, as well as its failure to pay all meal and rest period premium wages, Defendants issued inaccurate wage statements to Plaintiff and other non-exempt employees in violation of Labor Code § 226 and failed to pay Plaintiff and other non-exempt employees all wages owed at the time of separation in violation of Labor Code §§ 201-203.

16. 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

17. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per workday and/or 40.0 hours per workweek and were subject to Defendants' timekeeping policies and/or practices, during the period of April 6, 2016 through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices, during the period of April 6, 2016 through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0

hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the period of April 6, 2016 through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) received a combined rest period for shifts worked between 6.01 and 10.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the period of April 6, 2016 through the present.

e. The Unlawful Deduction Class consists of all Defendants' current and former non-exempt employees in California who were subject to Defendants' policies/practices of deducting time worked from earned wages, during the period of April 6, 2016 through the present.

f. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Unlawful Deduction Class, Meal Period Class and/or Rest Period Class, during the period of April 6, 2019 through the present.

g. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, and/or Unlawful Deduction Class who separated their employment from Defendants at any time from April 6, 2017 through the present.

18. **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 members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **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:

a. Whether Defendants violated the applicable Labor Code provisions, including, but

not limited to §§ 510 and 1194, by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

b. Whether Plaintiff and members of the Minimum Wage Class were compensated for all hours actually worked;

c. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

d. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;

e. Whether Defendants provided meal or rest period premium payments for non-compliant meal and/or rest periods;

f. Whether Defendants unlawfully deducted earned wages in violation of Labor Code §§ 221-223;

g. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

h. Whether Defendants failed to pay all final wages to members of the Waiting Time Class at the time of separation in violation of Labor Code §§ 201-203.

20. **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 timekeeping and meal and rest period policies and/or practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid overtime and minimum wages for all hours worked, was not provided all required meal periods, was not authorized and permitted

1 to take all required rest periods, did not receive meal and rest period premium wages for missed
2 or non-compliant meal and rest periods, was not provided with accurate, itemized wage
3 statements, and did not receive all final wages owed at the time of his separation from
4 employment.

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

11 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
12 an important public interest in establishing minimum working conditions and standards in
13 California. These laws and labor standards protect the average working employee from
14 exploitation by employers who have the responsibility to follow the laws and who may seek to
15 take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment. The nature of this action and the format of laws available to Plaintiff
17 and members of the Classes make the class action format a particularly efficient and appropriate
18 procedure to redress the violations alleged herein. If each employee were required to file an
19 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
20 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
21 their vastly superior financial and legal resources. Moreover, requiring each member of the
22 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
23 employees who would be disinclined to file an action against their former and/or current employer
24 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
25 employment. Further, the prosecution of separate actions by the individual class members, even
26 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
27 with respect to the individual class members against Defendants herein; and which would
28 establish potentially incompatible standards of conduct for Defendants; and/or legal

determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

26. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 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 work day and/or in excess of 40 hours of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class with one and one-half times their regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and the Overtime Class Members in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

29. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

30. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

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

32. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 1.

33. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and

civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 1194, 1197, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

36. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 1, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

38. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

39. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

40. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according

to Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM EARNED WAGES

(AGAINST ALL DEFENDANTS)

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

42. As alleged above, Defendants made unlawful deductions from Plaintiff's earned wages. As a result, Defendants failed to pay all wages owed to Plaintiff and members of the Unlawful Deduction Class in violation of Labor Code §§ 221-223.

43. Defendants' failure to pay all earned wages is unlawful and creates an entitlement to recovery by Plaintiff and the members of the Unlawful Deduction Class for unpaid wages, interest on said wages, and attorneys' fees pursuant to Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their actual regular hours worked, total gross wages earned, all rates of pay, and total net wages earned, in violation of Labor Code § 226 *et seq.*

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

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

costs of suit according to California Labor Code § 226 *et seq.*

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including minimum and overtime wages, and meal and rest period premium wages.

51. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 55. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of Business & Professions Code § 17200 *et seq.*, by:
7 (a) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (b)
8 failing to pay Plaintiff and members of the Overtime Class all overtime wages; (c) failing to
9 provide Plaintiff and members of the Meal Period Class with all meal periods to which they are
10 entitled, and/or failing to pay them meal period premium payments; (d) failing to authorize and
11 permit all required duty-free rest periods to Plaintiff and members of the Rest Period Class, and/or
12 failing to pay them rest period premiums payments; (e) failing to pay Plaintiff and members of
13 the Unlawful Deduction Class all wages earned; (f) failed to timely pay Plaintiff and members of
14 the Waiting Time Class all wages owed at time of separation of employment.

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

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

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

27 59. Plaintiff was compelled to retain the services of counsel to file this Complaint to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **NINTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 60. Defendants have committed several Labor Code violations against Plaintiff,
8 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
9 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
10 employees, brings this representative action against Defendants to recover the civil penalties due
11 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
12 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
13 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
14 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
15 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
16 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
17 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
18 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
19 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
20 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
21 subsequent violation per employee per pay period for those violations of the Labor Code for which
22 no civil penalty is specifically provided, based on the following Labor Code violations:

- 23 a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
24 earned overtime compensation in violation of Labor Code §§ 204, 226.2, 510, 558,
25 1194, and 1198;
- 26 b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
27 Wage Class, and other aggrieved employees in violation of Labor Code §§ 226.2,
28 558, 1182.12, 1194, 1194.2, 1197, and 1198;

- 1 c. Failing to provide all legally required meal periods, and failure to pay meal period
2 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
3 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
4 512, 558, and 1198;
- 5 d. Failing to authorize and permit all legally required rest periods, and failure to pay
6 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
7 employees at the regular rate of compensation in violation of Labor Code §§ 226.2,
8 226.7, 516, 558, and 1198;
- 9 e. Unlawfully deducting earned wages from wages paid to Plaintiff, the Wage
10 Deduction Class, and other aggrieved employees in violation of Labor Code §§
11 221, 222, and 223;
- 12 f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
13 employees with complete, accurate, itemized wage statements in violation of
14 Labor Code § 226 and 226.2;
- 15 g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
16 twice during each calendar month in violation of Labor Code § 204;
- 17 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
18 employees in violation of Labor Code § 1174, and 1198; and
- 19 i. Failing to timely pay all final wages and compensation earned by Plaintiff, the
20 Waiting Time Class, and other aggrieved employees at the time of separation in
21 violation of Labor Code §§ 201, 202, and 203;

22 61. On August 20, 2020, Plaintiff notified Defendants via certified mail, and notified
23 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
24 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
25 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
26 California Labor Code identified in Paragraph 60 (a)-(i). Now that sixty-five days have passed
27 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
28 provided notice that it intends to investigate the violations, Plaintiff has exhausted his

administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between April 6, 2019, and the present.

63. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other 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 receive 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, 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 Counsel for Plaintiff 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, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
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 §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for recovery of unpaid wages pursuant to Labor Code §§ 221-223;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §

226;

10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;

11. Upon the Eighth 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 or practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

12. Upon the Ninth 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 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 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 Labor Code violations identified in Paragraph 60 (a)-(i);

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

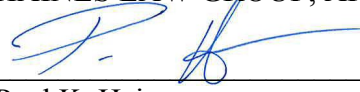
14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194 *et seq.*, 2699(g); and Code of Civil Procedure § 1021.5; and

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

Dated: October 27, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

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Dated: October 27, 2020

By:

Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Victor M. Negrete v. Creative Stone Mfg, Inc.

San Bernardino County Superior Court, Case No. CIVDS2018095

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On October 27, 2020, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

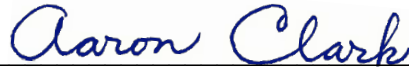
on the interested party(ies) in this action as follows:

Mary E. Lynch, Esq.
LAW OFFICES OF MARY E. LYNCH
5 Corporate Park, Suite 260
Irvine, California 92606
Attorneys for Defendant CREATIVE STONE MFG, INC.

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 27, 2020, at El Segundo, California.



Aaron Clark