

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

Attorneys for Plaintiff

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Superior Court of California
County of Los Angeles

AUG 07 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

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

CARMELLA JONES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PREVAIL RESOURCES LLC, a Texas limited
liability company; F2ONSITE, business entity
form unknown; and DOES 1 through 100,

Defendants.

Case No.: **20STCV29860**

CLASS ACTION COMPLAINT:

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 226.2, 510, 1194,
1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 226.2, 1182.12,
1194, 1194.2, AND 1197);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.2, 226.7, 516,
558);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802, 2804);**
- (6) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §§
226, 226.2); and**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 et seq.).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Carmella Jones (“Plaintiff”), on behalf of herself and all others similarly situated,
2 hereby brings this Class Action Complaint (“Complaint”) against Prevail Resources LLC, a Texas
3 limited liability company; F2Onsite, a business whose entity form is unknown; and DOES 1 to
4 100, inclusive (collectively “Defendants”), and on information and belief, alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et seq.*; Labor Code §§ 204, 226, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194,
9 1194.2, 1197, 1198, 2802, 2804, and Industrial Welfare Commission (“IWC”) Wage Order No.
10 4-2001 (hereinafter, “Wage Order 4”), in addition to seeking injunctive relief, declaratory relief,
11 and restitution.

12 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
13 The monetary damages and restitution that Plaintiff seeks 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 avail
17 themselves to the California market so as to render the exercise of jurisdiction over them by the
18 California courts consistent with the traditional notions of fair play and substantial justice.

19 **VENUE**

20 4. Venue as to each Defendant is proper in this judicial district pursuant to California
21 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
22 complained of herein occurred in the County of Los Angeles. Defendants transact business, have
23 agent(s) within the County of Los Angeles, and/or otherwise are found within the County of Los
24 Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of
25 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, Defendants employed Plaintiff as a non-exempt
2 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
3 herein, lost money and/or property, and has been deprived of the rights guaranteed by California
4 Business & Professions Code § 17200 *et seq.*; Labor Code §§ 204, 226, 226.2, 226.7, 510, 512,
5 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and Wage Order 4, which sets
6 employment standards for professional, technical, clerical, mechanical and similar occupations.

7 6. Plaintiff is informed and believes, and based thereon alleges, that during the statute
8 of limitations applicable to each cause of action alleged herein, Defendants did (and continue to
9 do) business by providing on-demand technical support to individuals and business throughout
10 the United States, and employed Plaintiff and other similarly situated non-exempt employees
11 within the State of California, including but not limited to Los Angeles County, and, therefore,
12 were (and are) doing business in Los Angeles County and the State of California.

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

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

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

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 11. Defendants are in the business of providing on-demand technical support to
10 individuals and businesses throughout the United States. Plaintiff worked for Defendants as a
11 non-exempt field technician since approximately June 2019 but has been on a medical leave of
12 absence since approximately mid-August 2019. During Plaintiff's employment with Defendants,
13 Plaintiff and other non-exempt employees were compensated exclusively on a piece-rate basis,
14 whereby they were paid a set amount for each service appointment.

15 12. Throughout Plaintiff's employment with Defendants, Defendants simultaneously
16 utilized numerous timekeeping systems to record Plaintiff's and other non-exempt employees'
17 hours worked. For instance, Defendants used an online system to track when Plaintiff began her
18 shift and completed her last service appointment. Defendants also used a system called DFSM, a
19 program that Plaintiff was required to download onto her phone and which tracked step by step
20 Plaintiff's time spent completing service appointments. For instance, through DFSM Plaintiff was
21 required to click buttons stating, among other things, when she was en route to the customer's
22 location, when she arrived to the customer's location, when she made contact with the customer,
23 and when she completed the service to the customer. In addition to tracking Plaintiff's hours
24 worked through the two timekeeping systems above, Defendants also required Plaintiff to call
25 them at the end of each shift to let them know when she arrived home and email them a copy of
26 the postage receipt from shipping the service parts to Defendants.

27 13. Despite Defendants' various methods for recording its employees' hours worked,
28 Defendants failed to compensate Plaintiff and other non-exempt employees for time spent

1 completing pre- and post- appointment tasks (i.e. non-productive time). These non-productive
2 tasks include, but are not limited to: calling clients to schedule service appointments, picking up
3 and dropping off computer parts at the post office, FedEx, or other locations, traveling in between
4 service appointments, completing mandatory trainings, and emailing Defendants a copy of
5 postage receipts at the end of their workday. As Plaintiff was often required to provide services
6 to 5-6 customers per workday, Plaintiff estimates that she was not paid for approximately 3-4
7 hours of non-productive time per shift. Additionally, at the start of Plaintiff's employment with
8 Defendants, Defendants required Plaintiff to undergo multiple full-day training sessions to
9 complete technical service courses for Dell, Lenovo, HP, as well as other software companies.
10 Defendants also required Plaintiff to undergo trainings at least once a month to learn new software
11 updates. At the end of each training, Plaintiff was required to send Defendants a copy of her
12 certification of completion. Plaintiff estimates that these trainings were on average eight hours
13 each. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for non-
14 productive time, Defendants failed to pay Plaintiff and other non-exempt employees at least
15 minimum wage for all hours worked. In addition, on those occasions when Plaintiff and other
16 non-exempt employees worked over 8 hours in a workday or over 40 hours in a workweek,
17 Defendants failed to pay overtime wages due as a result of their failure to pay for nonproductive
18 time.

19 14. Defendants also failed to pay Plaintiff and other non-exempt employees at least
20 minimum wage for all hours worked due to Defendants' policy and practice of compensating its
21 non-exempt employees at a set amount per appointment regardless of the amount of time required
22 to complete each appointment. For instance, on July 31, 2019, Plaintiff's time records show that
23 Plaintiff spent a total of 2.92 hours completing an appointment in San Diego, California but was
24 only paid \$20.00 for that appointment, or the equivalent of \$6.85 per hour, which was less than
25 California's minimum wage in 2019.

26 15. Additionally, throughout Plaintiff's employment with Defendants, Plaintiff
27 regularly worked in excess of 8 hours per day and/or 40 hours per week. However, as a result of
28 being compensated solely on a piece-rate basis as described above, Plaintiff was not compensated

1 at one and one-half times her regular rate of pay for hours worked in excess of 8 hours per day
2 and/or 40 hours per week and was therefore deprived of all overtime compensation.

3 16. Furthermore, Defendants did not properly compensate Plaintiff or other non-
4 exempt employees paid on a piece-rate basis for rest periods, as required under Labor Code §
5 226.2 and *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 (“under the rule of
6 *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately
7 compensated in a piece-rate system.”). Plaintiff and other non-exempt employees regularly
8 worked shifts of 3.5 hours or more, and were not provided with a paid rest period for every 4-
9 hour period worked, or major fraction thereof, because Defendants’ piece-rate compensation plan
10 failed to separately compensate Plaintiff and other non-exempt employees for required rest
11 periods. *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway*
12 *Inc.*, 216 Cal.App.4th 864 (2013) (“There is no dispute that Safeway’s activity-based
13 compensation system did not separately compensate drivers for their rest periods.”). Accordingly,
14 Defendants failed to pay Plaintiff and other non-exempt employees all wages owed, including
15 minimum and/or overtime wages, as a result of Defendants’ failure to separately compensate for
16 rest periods. In addition, Defendants are liable for rest period premiums pursuant to Labor Code
17 § 226.7 for their failure to separately compensate Plaintiff and other non-exempt employees paid
18 on a piece-rate basis for rest periods.

19 17. Defendants also failed to provide Plaintiff and other non-exempt employees with
20 legally-compliant meal periods of at least 30-minutes commencing before the conclusion of the
21 fifth hour of work and/or a second meal period when they worked shifts in excess of 10.0 hours.
22 As Plaintiff and other non-exempt employees were required to provide services to 5-6 different
23 customers per workday within pre-determined timelines, Plaintiff and other employees were often
24 required to take a meal period that was less than 30-minutes and/or take their meal periods while
25 commuting in between jobs. Moreover, as Defendants did not require Plaintiff and other non-
26 exempt employees to clock in and out for their meal periods, and maintained no other records of
27 employee meal periods, Defendants also failed to keep accurate records of employee hours
28 worked, including time records showing when employees took meal periods. In addition, on those

occasions that Defendants failed to provide all legally required meal periods, Defendants failed to compensate their employees with the required meal period premium for each workday in which employees experienced a meal period violation, in violation of Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that Plaintiff and other non-exempt employees were not provided with a legally-compliant meal period.

18. Defendants also failed to reimburse Plaintiff and other non-exempt employees for all reasonable and necessary work expenditures, including, but not limited to computer and other equipment, mileage, and personal cellular phone expenses. Specifically, Defendants required their non-exempt employees to purchase their own laptop computer and external hard drive in order to download software and other programs needed to assist Defendants' customers. Additionally, Defendants required Plaintiff and other non-exempt employees to use their own personal vehicle to travel in between job locations and to pick up and drop off computer parts, without properly compensating Plaintiff and other non-exempt employees for all mileage recorded as well as mileage to and from the post office, FedEx, or other locations to which Plaintiff and other non-exempt employees traveled in order to mail computer parts. Lastly, Defendants required Plaintiff and other non-exempt employees to use their personal cellular phones for work-related purposes, including clocking in and out and scheduling appointments with Defendants' customers, but failed to reimburse Plaintiff and other non-exempt employees for use of their cellphones. Therefore, Plaintiff and other non-exempt employees are entitled reimbursement pursuant to Labor Code § 2802.

19. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff. Furthermore, Defendants issued facially non-compliant wage statements to Plaintiff and other non-exempt employees by failing to list the number of piece-rate units earned and any applicable piece rate in violation of Labor Code § 226(a)(3), incorrectly listing "F2Onsite" as the employer in violation of Labor Code § 226(a)(8), failing to list the total hours of compensable rest and recovery periods and the corresponding rate

of compensation and gross wages for those periods in violation of Labor Code § 226.2(a)(2)(A), and failing to state the total hours of non-productive time along with the corresponding rate of compensation and gross wages for non-productive time worked in violation of Labor Code § 226.2(a)(2)(B).

20. 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

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

- a. The Overtime Class consists of all 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 who performed work that was compensated on a piece-rate basis, 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 performed work that was compensated on a piece-rate basis, during the period of April 6, 2016 through the present.
- c. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked a shift of 3.5 hours or more while being compensated on a piece-rate basis, during the period of April 6, 2016 through the present.
- d. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a recorded 30-minute meal period commencing prior to the end of the fifth hour of work; and/or (ii) worked at least one shift in excess of 10.0 hours without a second recorded 30-minute meal period commencing prior to the end of the tenth hour of work, during the period of April 6, 2016 through the present.

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

f. The Wage Statement Class consists of: (i) all members of the Overtime Class, Minimum Wage Class, Rest Period Class, and/or Meal Period Class who received a wage statement from Defendants; and/or (ii) any of Defendants' current and former employees who received a wage statement, during the period of April 6, 2019 through the present.

22. **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 is unknown to Plaintiff at this time; however, it is estimated that the members of each of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

23. **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 non-exempt employees, which predominate over questions affecting only individual members including, without limitation:

a. Whether Defendants violated the applicable Labor Code provisions, including but not limited to §§ 510 and 1194, by requiring overtime work and not paying Plaintiff and members of the Overtime Class for said work according to the overtime laws of the State of California;

b. Whether Defendants' policies and/or practices resulted in the failure to properly compensate Plaintiff and members of the Minimum Wage Class at least minimum wage for all hours worked;

c. Whether Defendants authorized and permitted all legally-compliant rest periods to Plaintiff and members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

- d. Whether Defendants provided all legally-compliant meal periods to Plaintiff and members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- e. Whether Defendants' reimbursement policies, and failure to reimburse Plaintiff and members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties, comply with Labor Code § 2802; and
- f. Whether Defendants furnished legally-compliant wage statements to Plaintiff and members of the Wage Statement Class pursuant to Labor Code §§ 226 and 226.2.

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' piece-rate compensation plans, meal and rest period policies/practices, policies/practices related to reimbursement for necessary business expenditures, and policies/practices related to furnishing wage statements. 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.

25. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Defendants employed Plaintiff as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff, like the members of the Classes, did not receive minimum and overtime wages for all hours worked, was not authorized and permitted to take all rest periods, was not provided all meal periods, did not receive reimbursements for necessary business expenditures, and did not receive accurate itemized wage statements.

26. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-

hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

27. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would 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 are maintainable as classes under § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
6 1198, which provide that non-exempt employees are entitled to all overtime wages and
7 compensation for all overtime hours worked and provide a private right of action for the failure
8 to pay all overtime compensation for overtime work performed. This cause of action is also
9 brought pursuant to Labor Code § 226.2, which requires employers to compensate piece-rate
10 employers separately for rest periods and other nonproductive time.

11 30. At all times relevant herein, Defendants were required to properly compensate
12 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
13 hours worked pursuant to California Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3
14 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
15 rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in a
16 workweek. Defendants caused Plaintiff and members of the Overtime Class to work overtime
17 hours, but failed to credit these employees with all overtime hours actually worked.

18 31. The foregoing policies and practices are unlawful and create entitlement to
19 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of
20 overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and
21 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198;
22 Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

23 **SECOND CAUSE OF ACTION**

24 **MINIMUM WAGE VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

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

27 33. Wage Order 4, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
28 right of employees to be paid minimum wages for all hours worked in amounts set by state law.

1 Labor Code § 226.2 requires employers to compensate piece-rate employees separately for rest
2 periods and other nonproductive time. Labor Code §§ 1194(a) and 1194.2(a) provide that an
3 employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may
4 recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated
5 damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant
6 times herein, Defendants failed to conform their pay practices to the requirements of the law by
7 failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but
8 not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted
9 to work under the California Labor Code and Wage Order 4.

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

15 35. As a direct and proximate result of Defendants' unlawful conduct as alleged
16 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
17 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
18 entitled to recover economic and statutory damages and penalties and other appropriate relief as
19 a result of Defendants' violations of the California Labor Code and Wage Order 4.

20 36. Defendants' practice and uniform administration of corporate policy regarding
21 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
22 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
23 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
24 of suit according to California Labor Code §§ 204, 218.6, 558, 1194, *et seq.*, 1197, 1198; Code
25 of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

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1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 38. Labor Code §§ 226.7 and 516, and Wage Order 4, § 12 establish the right of
6 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
7 period worked, or major fraction thereof. Labor Code § 226.2 provides that rest periods must be
8 separately compensated for piece rate employees.

9 39. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
10 of the Rest Period Class to take their legally entitled rest periods. Defendants also failed to
11 compensate Plaintiff and members of the Rest Period Class for each rest period to which they
12 were entitled while working.

13 40. The foregoing violations create an entitlement to recovery by Plaintiff and
14 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
15 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
16 to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; and Civil Code §§ 3287
17 and 3289.

18 **FOURTH CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 42. Defendants failed to provide Plaintiff and members of the Meal Period Class with
23 proper meal periods in accordance with the mandates of the California Labor Code and Wage
24 Order 4. As such, Defendants are responsible for paying premium compensation for meal period
25 violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 4.

26 43. Plaintiff is informed and believes that Defendants maintained a policy and/or
27 practice of failing to pay meal period premiums at the employee's regular rate of pay, despite
28 Plaintiff and other members of the Meal Period Class not being provided with legally complaint

1 meal periods. As a result, Plaintiff and members of the Meal Period Class are owed meal period
2 premium payments, including interest thereon, civil penalties, and costs of suit pursuant to
3 California Labor Code §§ 226.7, 512, 558; Code of Civil Procedure § 1021.5; and Civil Code §§
4 3287 and 3289.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

22 48. As a proximate result of Defendants’ policies and/or practices in violation of Labor
23 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages
24 in sums, which will be shown according to proof.

25 49. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
26 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

27 50. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
28 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

1 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
2 from the date on which they incurred the initial necessary expenditure.

3 **SIXTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
9 and the Wage Statement Class with accurate and itemized wage statements that included, among
10 other requirements, the total number of hours worked, total wages earned, and the correct
11 employer name in violation of Labor Code § 226. Defendants also failed to furnish Plaintiff and
12 members of the Wage Statement Class who were compensated on a piece-rate basis with accurate
13 itemized wage statements that included the number of piece-rate earnings and the applicable piece
14 rate, the total hours of compensable rest and recovery periods and the corresponding rate of
15 compensation and gross wages for those periods, and the total hours of non-productive time along
16 with the corresponding rate of compensation and gross wages for non-productive time worked, in
17 violation of Labor Code § 226.2.

18 53. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
19 with accurate itemized wage statements resulted in injury, as said failures led to, among other
20 things, the non-payment of all their minimum and overtime wages, meal and rest period premium
21 wages, and deprived them of the information necessary to identify the discrepancies in
22 Defendants' reported data. Moreover, the information required to be included on employee wage
23 statements could not be promptly and easily determined by a reasonable person from the wage
24 statement alone.

25 54. Defendants' failures create an entitlement to recovery by Plaintiff and members of
26 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
27 Code §§ 226 and 226.2, including statutory penalties, civil penalties, and reasonable attorneys'
28 fees and costs of suit according to Labor Code §§ 226 and 226.3.

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 56. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of Business and Professions Code § 17200 *et seq.* by:
7 (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages for all overtime
8 hours worked; (b) failing to pay Plaintiff and members of the Minimum Wage Class at least at
9 the minimum wage for all hours worked; (c) failing to authorize and permit all required duty-free
10 rest periods to Plaintiff and members of the Rest Period Class, and failing to pay them rest period
11 premiums payments; (d) failing to provide Plaintiff and members of the Meal Period Class with
12 all meal periods to which they are entitled, and failing to pay them meal period premium
13 payments; (e) failing to reimburse all necessary business expenditures to Plaintiff and members
14 of the Employee Expense Class; and (f) failing to furnish Plaintiff and members of the Wage
15 Statement Class with accurate itemized wage statements.

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

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

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

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

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

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
7 this suit is brought against Defendants, as follows:

- 8 1. For an order certifying the proposed Classes;
- 9 2. For an order appointing Plaintiff as representative of the Classes;
- 10 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 11 4. Upon the First Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 226.2, 510, 558, 1194, and
13 1198;
- 14 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
15 damages, and penalties according to proof pursuant to Labor Code §§ 226.2, 1182.12, 1194,
16 1194.2, and 1197;
- 17 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
18 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7 and 516;
- 19 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
20 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 21 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 23 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§
24 226, *et seq.* and 226.2;
- 25 10. Upon the Seventh Cause of Action, for restitution to Plaintiff of all money and/or
26 property unlawfully acquired by Defendants by means of any acts or practices declared by this
27 Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 28 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6, and Civil Code §§ 3287 and 3289;

2 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code
3 §§ 226, 1194 *et seq.*, and 2802(c), and Code of Civil Procedure § 1021.5; and

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

5
6 Dated: August 6, 2020

HAINES LAW GROUP, APC

7
8 By:


Paul K. Haines
Attorneys for Plaintiff

9
10 **DEMAND FOR JURY TRIAL**

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

12 Dated: August 6, 2020

HAINES LAW GROUP, APC

13
14 By:


Paul K. Haines
Attorneys for Plaintiff