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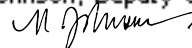
Attorneys for Plaintiff

ELECTRONICALLY FILED

Superior Court of California,
County of Marin

08/11/2022

By: N Johnson, Deputy Clerk



**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

TIMOTHY ISAAC, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CENTRAL PAYMENT CO., LLC, a Delaware
limited liability company, TSYS MERCHANT
SOLUTIONS, LLC, a Delaware limited liability
company, and DOES 1 through 100,

Defendants.

Case No.: CIV2002734

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 226.2, 510, 558, 1194
AND 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 226.2, 1182.12,
1194, 1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198)**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.2, 226.7
AND 516);**
- (5) **FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENSES (LABOR CODE §§
2802, 2804);**
- (6) **UNLAWFUL DEDUCTIONS
FROM WAGES (LABOR
CODE §§ 221-223)**
- (7) **WAGE STATEMENT
VIOLATIONS (LABOR CODE
§ 226 *et seq.*, 226.2);**
- (8) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (9) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*).**
- (10) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE
§§ 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Timothy Isaac (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this Second Amended Class and Representative Action Complaint against Defendants Central Payment Co., LLC, a Delaware limited liability company; TSYS Merchant Solutions, LLC, a Delaware limited liability company; and DOES 1 to 100, inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this class and representative action for recovery of unpaid wages and penalties under California Business and Professions Code § 17200, *et. seq.*, Labor Code §§ 201-204, 226, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698, *et seq.* and Industrial Welfare Commission Wage Order No. 7 (“Wage Order 7”), in addition to seeking declaratory relief and restitution. This class action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Marin. Defendants own, maintain offices, transact business, have an agent or agents within the County of Marin, and/or otherwise are found within the County of Marin, and Defendants are within the jurisdiction of this Court for purposes of service of process. In addition, Defendants required Plaintiff to sign a contract related to his employment, which provides that any “disputes arising from or relating to this Agreement shall be adjudicated in a court of competent jurisdiction located in or whose jurisdiction includes Marin County, California.”

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee (although, as described herein, he was misclassified as an independent contractor). Plaintiff was, and is, a victim of Defendants’ policies and/or practices

complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-204, 226, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698, *et seq.* and Business & Professions Code § 17200 *et seq.* (Unfair Competition), and Wage Order 7, which sets employment standards for the mercantile industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the statute of limitations applicable to each cause of action alleged herein, Defendants did (and do) business by providing payment processing services to businesses throughout the nation, and were and are headquartered within Marin County, California and, therefore, were (and are) doing business in Marin County and the State of California.

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

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Class (as defined below).

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

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
5 Members, as defined below.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff worked for Defendants as a “Sales Representative” from approximately
8 July 2017 to approximately November 20, 2019. At the beginning of Plaintiffs’ employment with
9 Defendants, Defendants required Plaintiff to sign a form “Representative and Non-Disclosure
10 Agreement” which contained terms governing Plaintiffs’ work for Defendants. Among other
11 things, the Agreement contained a provision titled “GOVERNING LAW,” which provides that
12 “This Agreement and all the documents referred to herein, shall in all respects, be interpreted,
13 enforced and governed by and under the Law of the State of California.” Plaintiff is informed,
14 believes, and based thereon alleges that Defendants required all of their Sales Representatives to
15 sign the same or similar agreements during the time period relevant to this lawsuit.

16 10. Defendants are in the business of selling payment processing equipment and
17 services to businesses (“merchants”) across the nation. In running their business, Defendants
18 classify their Sales Representatives that perform their core business functions as independent
19 contractors, as opposed to employees. Notwithstanding that Plaintiff and other similarly situated
20 individuals should be classified as non-exempt employees of Defendants, because they provide
21 services that are within the usual course of the hiring entity’s business, Defendants willfully
22 misclassified their sales representatives as independent contractors. *See Dynamex Operations*
23 *West, Inc. v. The Superior Court of Los Angeles County* (2018) 4 Cal.5th 903 (“Under this [ABC]
24 test, a worker is properly considered an independent contractor to whom a wage order does not
25 apply only if the hiring entity establishes: . . . (B) that the worker performs work that is outside
26 the usual course of the hiring entity’s business . . .”).

27 11. Throughout his employment with Defendants, Plaintiff and other Sales
28 Representatives were paid on a piece rate/commission basis, whereby they were paid a “bonus”

for each merchant they signed up for Defendants’ services, as well as fees (or “residuals”) which were calculated based on a percentage of the fees Defendants were paid by banks based on the adjusted gross sales of merchants whom the Sales Representative had signed up for Defendants’ services, and/or other compensation based on the number and/or income of accounts they obtained, rather than an hourly wage or salary. As a result, Plaintiff and other Sales Representatives were not paid for all non-productive time, including but not limited to, time spent attending trainings and meetings with management, traveling to and from FedEx to ship defective devices and other items for customers, and providing customer support to merchants, including but not limited to billing and technical support. As Plaintiff provided service support to approximately 100 accounts, Plaintiff estimates that he was not paid for approximately 20-30 hours of non-productive customer service work each week.

12. Additionally, at the start of Plaintiff’s employment, Defendants required Plaintiff to undergo extensive training to learn about each of the products Defendants was selling as well as the procedures for selling the products. Defendants did not pay Plaintiff any wages for these trainings. While most of these trainings were completed online or by telephone, on occasion, Plaintiff was required to attend in-person training. Specifically, in September of 2017, Plaintiff was required to travel to Defendants’ headquarters in San Rafael, California to complete a multi-day in-person training, for which he was not paid any wages. In addition to the training at the start of Plaintiff’s employment, Defendants also required Plaintiff to undergo weekly unpaid trainings to learn about product updates and changes in Defendants’ procedures. Plaintiff estimates that he spent approximately 10 hours each week completing trainings. As a result of Defendants’ failure to pay Plaintiff and other Sales Representatives for non-productive time, Defendants failed to pay Plaintiff and other non-exempt employees at least the minimum wage for all hours worked. In addition, on those occasions when Plaintiff and other non-exempt employees worked over 8 hours in a workday or over 40 hours in a workweek, Defendants failed to pay overtime wages due as a result of their failure to pay for nonproductive time.

13. Furthermore, Defendants did not properly compensate Plaintiff or other non-exempt employees paid on a piece rate/commission basis for rest periods as required by Labor

Code § 226.2. *See Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98. Plaintiff and other non-exempt employees regularly worked 3.5 hours or more in a workday, and were not provided with a paid rest period for every 4-hour period worked, or major fraction thereof, because Defendants’ compensation plan failed to separately compensate Plaintiff and other non-exempt employees for required rest periods. *See id.*; *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (“There is no dispute that Safeway’s activity-based compensation system did not separately compensate drivers for their rest periods.”). Accordingly, Defendants failed to pay Plaintiff and other non-exempt employees all wages owed, including minimum and/or overtime wages, as a result of Defendants’ failure to separately compensate for rest periods. In addition, as a result of failing to authorize and permit *paid* rest periods, Defendants failed to authorize and permit rest periods as required under Wage Order 7, § 12. As a result, Defendants owed Plaintiff and other Sales Representatives rest periods premiums pursuant to Labor Code § 226.7 and Wage Order 7, § 12(B), but failed to pay them those premiums. On information and belief, for at least a portion of the relevant time period, Defendants did not maintain a pay code or other mechanism for paying rest period premiums.

14. Defendants also failed to provide Plaintiff and other non-exempt Sales Representatives with all required meal periods. For example, during his training at Defendants’ headquarters at the beginning of his employment, Plaintiff was not provided with any off-duty meal periods, even though he was subject to Defendant’s control for more than 5 hours on each workday during training. Defendants failed to pay Plaintiff any meal period premiums for those workdays on which he was not provided legally compliant meal periods.

15. Defendants also failed to reimburse Plaintiff and other non-exempt Sales Representatives for all reasonable and necessary work expenditures, including, but not limited to computer and other equipment, mileage, shipping, and personal cellphone expenses. Specifically, Defendants required Sales Representatives to purchase their own laptop computer and printer in order to complete purchases, complete trainings, communicate with Defendants, and/or otherwise assist Defendants’ customers/merchants. Additionally, Defendants required Plaintiff and other Sales Representatives to use their personal vehicles to occasionally travel to customers’ locations

1 to provide customer service and drop off merchandise, without properly compensating Plaintiff
2 and other Sales Representatives for all mileage recorded as well as mileage to and from the post
3 office, FedEx, or other locations to which Plaintiff and other Sales Representatives traveled to
4 ship defective devices on behalf of customers. Lastly, Defendants required Plaintiff and other
5 Sales Representatives to use their personal cellular phones or landline telephones for work-related
6 purposes, including making sales calls, speaking with Defendants' service support center,
7 attending trainings, and scheduling meetings with Defendants' customers/merchants, among
8 others, but failed to reimburse Plaintiff and other Sales Representatives for use of their telephones.
9 Therefore, Plaintiff and other non-exempt employees are entitled reimbursement pursuant to
10 Labor Code § 2802.

11 16. Defendants also took unlawful deductions from Plaintiff's and other Sales
12 Representatives' wages. For example, the Agreement between Plaintiff and Defendants specified
13 that Sales Representatives were allowed to use business cards with Defendants' name and/or
14 trademark, but that "a fee for the cost of printing the business cards will be deducted periodically
15 from the compensation earned by Representative per this Agreement." Defendants also took
16 deductions for shipping costs and other business expenses. As a result of these and other
17 deductions, Defendants took unlawful deductions from Sales Representatives' wages. *See, e.g.,*
18 *Hudgins v. Neiman Marcus Grp., Inc.*, 34 Cal.App.4th 1109 (1995) (prohibiting deductions from
19 wages that shift the cost of doing business from employer to employee).

20 17. As a result of Defendants' failure to pay all minimum and overtime wages and rest
21 period premiums, Defendants maintained inaccurate payroll records and issued inaccurate wage
22 statements, and failed to pay all final wages owed to Plaintiff and other Sales Representatives at
23 their separation of employment. Additionally, upon information and belief, Defendants failed to
24 issue accurate itemized wage statements to Plaintiff and other Sales Representatives by (i) failing
25 to issue wage statements at all; and/or (ii) by issuing facially deficient wage statements that failed
26 to include, among other things, the total hours of compensable rest and recovery periods and the
27 corresponding rate of compensation and gross wages for those periods in violation of Labor Code
28 § 226.2(a)(2)(A), and the total hours of non-productive time along with the corresponding rate of

1 compensation and gross wages for non-productive time worked in violation of Labor Code §
2 226.2(a)(2)(B).

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

7 **CLASS ACTION ALLEGATIONS**

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

10 20. The Class consists of all of Defendants' current and former Sales Representatives
11 who either (i) worked for Defendants and lived in California; (ii) worked for Defendants and had
12 active accounts in California, but lived elsewhere; and/or (iii) worked for Defendants and traveled
13 to California for training; and California law applied to the services relationship between the Sales
14 Representatives and Defendants per their written agreement, at any time during the period of
15 September 18, 2016 through the present.

16 21. The Wage Statement Class consists of all Class members who performed work for
17 Defendants during the period of September 18, 2019 through the present.

18 22. The Waiting Time Class consists of all Class members who separated their
19 employment with Defendants during the period of September 18, 2017 through the present.

20 23. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
21 joinder of all members would be unfeasible and not practicable. The membership of the Classes
22 is unknown to Plaintiff at this time; however, it is estimated that each Class numbers greater than
23 fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of
24 Defendants' records.

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

- 1 i. Whether Defendants misclassified Class members as independent contractors;
- 2 ii. Whether Defendants' overtime policies and/or practices violate the applicable
- 3 Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring
- 4 overtime work and not paying for said work according to the overtime laws of the
- 5 State of California;
- 6 iii. Whether Plaintiff and members of the Class were compensated for all hours
- 7 actually worked;
- 8 iv. Whether Defendants authorized and permitted legally compliant rest periods to
- 9 members of the Class;
- 10 v. Whether Defendants' policies and/or practices of reimbursing necessary business
- 11 expenses for members of the Class violated California law;
- 12 vi. Whether Defendants' deductions from Class members wages were lawful under
- 13 Labor Code §§ 221-223;
- 14 vii. Whether Defendants furnished legally-compliant wage statements to Plaintiff and
- 15 Wage Statement Class members pursuant to Labor Code §§ 226 and 226.2; and
- 16 viii. Whether Defendants' policies and/or practices for the timing and amount of
- 17 payment of final wages to Plaintiff and members of the Waiting Time Class at the
- 18 time of their separation of employment were lawful.

19 25. **Predominance of Common Questions:** Common questions of law and fact

20 predominate over questions that affect only individual members of the Class. The common

21 questions of law set forth above are numerous and substantial and stem from Defendants' policies

22 and/or practices applicable to each individual class member, such as Defendants' uniform

23 misclassification of Class members as independent contractors, uniform method of not paying all

24 overtime and minimum wage compensation, uniform rest period policies (or lack thereof),

25 uniform reimbursement policies (or lack thereof), uniform failure to furnish accurate and itemized

26 wage statements, and to timely pay all final wages upon separation of employment. As such, the

27 common questions predominate over individual questions concerning each individual class

28 member's showing as to his or her eligibility for recovery or as to the amount of damages.

26. **Typicality:** The claims of Plaintiff are typical of the claims of the Class because Plaintiff was classified by Defendants as an independent contractor during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Class, was deprived of required overtime and minimum wages, was not authorized and permitted paid rest periods, was not reimbursed for necessary business expenses, had unlawful deductions taken from his wages, was not paid all wages owed at the time of his separation from employment, and was not issued accurate itemized wage statements.

27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Class 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 Class.

28. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards under California law. 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 Class 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 Class 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

1 employment. Further, the prosecution of separate actions by the individual class members, even
2 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
3 with respect to the individual class members against Defendants herein; and which would
4 establish potentially incompatible standards of conduct for Defendants; and/or legal
5 determinations with respect to individual class members which would, as a practical matter, be
6 dispositive of the interest of the other class members not parties to adjudications or which would
7 substantially impair or impede the ability of the class members to protect their interests. Further,
8 the claims of the individual members of the class are not sufficiently large to warrant vigorous
9 individual prosecution considering all of the concomitant costs and expenses attending thereto.
10 As such, the Class identified in Paragraph 18 is maintainable as a Class under § 382 of the Code
11 of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL OVERTIME WAGES**

14 **(AGAINST ALL DEFENDANTS)**

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

16 30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
17 1198, which provide that non-exempt employees are entitled to all overtime wages and
18 compensation for all overtime hours worked and provide a private right of action for the failure
19 to pay all overtime compensation for overtime work performed. This cause of action is also
20 brought pursuant to Labor Code § 226.2, which requires employers to compensate piece-rate
21 employees, including employees compensated by commissions, separately for rest periods and
22 other nonproductive time.

23 31. At all times relevant herein, Defendants were required to properly compensate
24 non-exempt employees, including Plaintiff and Class members, for all overtime hours worked
25 pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an
26 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
27 for work in excess of 8 hours per work day and/or in excess of 40 hours of work in a workweek.
28 Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular

rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Class members to work overtime hours, but failed to credit these employees with all overtime hours actually worked.

32. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and 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, 218.6, 510, 1194, and 1198; Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

34. Wage Order 7, § 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 § 226.2 requires employers to compensate piece-rate employees, including employees compensated by commissions, separately for rest periods and other nonproductive time. 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. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and Class members for all hours actually 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 7.

35. 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 balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

36. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and Class members have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they 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 7.

37. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit, according to California Labor Code §§ 204, 218.6, 558, 1194, *et seq.*, 1194.2, 1197, 1198; Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

THIRD CAUSE OF ACTION

**MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)**

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

39. 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 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 Class members at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

40. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7, 512, 558, and 1198 and Wage Order 1, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

42. Labor Code §§ 226.7 and 516, and Wage Order 7, § 12 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. Labor Code § 226.2 provides that rest periods must be separately compensated for piece rate employees. Moreover, California case law has held that employees paid on commission must also be paid separately for rest periods and other nonproductive time.

43. As alleged herein, Defendants failed to authorize and permit Plaintiff and Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Class members for each rest period to which they were entitled while working.

44. The foregoing violations create an entitlement to recovery by Plaintiff and Class members 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, 558; Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
(AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

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

47. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any

employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

48. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal equipment, vehicles, personal cellular phones, and/or incur other expenses for work purposes, and failing to pay reimbursements to Plaintiff and Class members, Defendants have violated Labor Code §2802.

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

50. Plaintiff and Class members are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

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

SIXTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM WAGES

(AGAINST ALL DEFENDANTS)

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

53. As alleged above, Defendants took unlawful deductions from Plaintiff’s earned wages, including deductions to cover the costs of business cards. As a result, Defendants failed to pay all wages owed to Plaintiff and Class members, in violation of Labor Code §§ 221-223, which prohibit, among other things, deductions from earned wages (including commissions) except in certain enumerated circumstances not applicable here.

54. Defendants’ failure to pay all earned wages is unlawful and creates an entitlement to recovery by Plaintiff and Class members for unpaid wages, interest on said wages, and attorneys’ fees pursuant to Labor Code § 218.6 and Code of Civil Procedure § 1021.5.

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SEVENTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

56. 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 Wage Statement Class members with accurate itemized wage statements that included, among other requirements, the total number of hours worked, total wages earned, and the correct employer name in violation of Labor Code § 226. Upon information and belief, Defendants also failed to furnish Plaintiff and members of the Wage Statement Class with accurate itemized wage statements including the total hours of compensable rest and recovery periods and the corresponding rate of compensation and gross wages for those periods, and the total hours of non-productive time along with the corresponding rate of compensation and gross wages for non-productive time worked, as well as the piece-rate wages earned and the corresponding number or pieces and piece rates in effect during the pay period, in violation of Labor Code §§ 226 and 226.2.

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

58. 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 and 226.2, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit according to Labor Code §§ 226 and 226.3.

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EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

60. 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.

61. 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, wages that were unlawfully deducted, and meal and rest period premium wages.

62. 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.

63. 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.

64. 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

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

1 66. Defendants have engaged and continue to engage in unfair and/or unlawful
2 business practices in California in violation of Business and Professions Code § 17200 *et seq.* by:
3 (a) failing to pay Plaintiff and Class members all overtime wages for all overtime hours worked;
4 (b) failing to pay Plaintiff and Class members at least at the minimum wage for all hours worked;
5 (c) failing to authorize and permit all required duty-free, paid rest periods to Plaintiff and Class
6 members, and failing to pay them rest period premiums payments; (d) failing to reimburse all
7 necessary business expenditures to Plaintiff and Class members; (e) taking unlawful deductions
8 from Class members' wages; (f) failing to furnish Plaintiff and members of the Wage Statement
9 Class with accurate itemized wage statements; and (g) failing to pay all final wages owed to
10 Plaintiff and members of the Waiting Time Class at the time of their separation from employment
11 with Defendants.

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

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

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

24 70. Plaintiff was compelled to retain the services of counsel to file this court action to
25 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
26 of Defendants' current non-exempt employees, and to enforce important rights affecting the
27 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
28 which he is entitled to recover under Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

72. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of himself, the State of California, and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (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 of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 226.2, 510, 558, 1194, and 1198;
- b. Failing to compensate Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 226.2, 558, 1182.12, 1194, 1194.2, 1197 and 1198;

- 1 c. Failing to authorize and permit Plaintiff and other aggrieved employees to take their
2 statutorily mandated rest periods and failing to pay rest period premiums in
3 violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;
- 4 d. Failing to reimburse Plaintiff and other aggrieved employees for all necessary
5 business expenses in violation of Labor Code §§ 1198, 2802 and 2804;
- 6 e. Making unlawful deductions to the wages of Plaintiff and other aggrieved
7 employees in violation of Labor Code §§ 221-223 and 1198;
- 8 f. Failing to furnish accurate itemized wage statements to Plaintiff and other
9 aggrieved employees, in violation of Labor Code §§ 226 and 226.2;
- 10 g. Failing to timely pay all final wages and compensation earned by Plaintiff and other
11 aggrieved employees at separation in violation of Labor Code §§ 201-203;
- 12 h. Failing to pay aggrieved employees all wages earned at least twice each calendar
13 month in violation of Labor Code § 204; and
- 14 i. Failing to maintain accurate records on behalf of aggrieved employees in violation
15 of Labor Code §§ 1174, 1198 and 1199.

16 73. On or around September 23, 2020, Plaintiff notified Defendants Central Payment
17 Co., LLC, and TSYS Merchant Solutions, LLC, via certified mail, and the California Labor and
18 Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the
19 California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California
20 Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in
21 paragraph 72 (a)-(i) above. Now that sixty-five days have passed from Plaintiff’s notifying
22 Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative
23 requirements for bringing a claim under the Private Attorneys General Act with respect to these
24 violations.

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

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, 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, 226.2, 510, 558, 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 §§ 226.2, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.2, 226.7 and 516;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
9. Upon the Sixth Cause of Action, for recovery of unlawfully deducted wages pursuant to Labor Code §§ 221-223;
10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code §§ 226, *et seq.* and 226.2;
11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
12. Upon the Ninth Cause of Action, for restitution to Plaintiff and Class members 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 Business and Professions Code § 17200 *et seq.*;

///

1 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other
2 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
3 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
4 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
5 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
6 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
7 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
8 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
9 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
10 subsequent violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay
11 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
12 employee per pay period for those violations of the Labor Code for which no civil penalty is
13 specifically provided, based on the violations of Labor Code sections cited in Paragraph 72 (a)-
14 (i) above;

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

17 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code
18 §§ 226, 1194, 2699, *et seq.*, and 2802(c), and Code of Civil Procedure § 1021.5; and

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

20
21 Dated: August 11, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

22
23 By:



Paul K. Haines
Attorney for Plaintiff

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1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: August 11, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

5
6 By:



Paul K. Haines
Attorney for Plaintiff

Timothy Isaac v. Central Payment Co., LLC., et al.
Marin County Superior Court Case No. CIV2002734

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 2155 Campus Drive, Suite 180, El Segundo, California 90245.

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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LLC

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



PROOF OF SERVICE