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LOS ANGELES SUPERIOR COURT

FILED

Superior Court of California
 County of Los Angeles

DEC 28 2020

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DEC 28 2020

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Attorneys for Plaintiff

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

SAMUEL HERNANDEZ, as an individual
 and on behalf of all others similarly situated,

Plaintiff,

vs.

SPECTRA COMPANY, a California
 Corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV39910

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:

- (1) **FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197, 1198);**
- (3) **REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 558);**
- (4) **MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 558);**
- (5) **WAGE STATEMENT PENALTIES (LABOR CODE § 226 et seq.);**
- (6) **WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- (7) **FAILURE TO REIMBURSE FOR ALL NECESSARY BUSINESS EXPENDITURES (LABOR CODE §§ 2802, 2804);**
- (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 Samuel Hernandez (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 Defendant Spectra Company, a California Corporation; and DOES 1 to
4 100, inclusive (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself 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 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
9 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, and Industrial Welfare Commission
10 Wage Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
18 an agent or agents within the County of Los Angeles, and/or otherwise are found within the
19 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
20 service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff is a victim of Defendants’ policies and/or practices complained of herein, lost
27 money and/or property, and have been deprived of the rights guaranteed by Labor Code §§ 201-
28 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and

2698 *et seq.*; and Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 16, which sets employment standards for restoration and construction industries.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by providing specialty restoration and construction services, and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County and the State of California and, therefore, were (and are) doing business in Los Angeles 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 based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes 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 Classes.

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.

8. 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,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants are a historic restoration and construction company operating
5 primarily in California. Plaintiff worked for Defendants as a non-exempt employee from
6 approximately June 2019 to approximately April 2020, in the of position of carpenter and painter.
7 Plaintiff's primary job duties consisted of providing construction services for projects including,
8 but not limited to, commercial businesses and private residences.

9 10. During Plaintiff's employment with Defendants, Defendants' policy and/or
10 practice was to compensate its non-exempt employees for their scheduled hours, as opposed to
11 the hours they actually worked, which were regularly greater than their scheduled hours, due to
12 Defendants knowing, permitting, and requiring work to be performed by employees outside of
13 their scheduled hours of work. Specifically, Defendants required Plaintiff and other non-exempt
14 employees to clock in and out by scanning a "bar code tag" through an electronic timeclock,
15 which Defendants refer to as "badge swiping." In addition to requiring Plaintiff and other non-
16 exempt employees to clock in and out by "badge swiping," Defendants required Plaintiff and
17 other non-exempt employees to fill out paper timecards each workday. When filling out paper
18 time cards, Defendants required Plaintiff to only list his scheduled hours, as opposed to all hours
19 actually worked, and prohibited Plaintiff from writing his actual start and end times each workday.
20 Despite requiring Plaintiff to "badge swipe" at the beginning and end of his workday, Defendants
21 compensated Plaintiff and other non-exempt employees based on the paper time cards which
22 evidenced scheduled hours of work, as opposed to all hours worked. Defendants' timekeeping
23 policy expressly provides, "The badge swiping system is not considered the official system for
24 calculating hours worked for the purpose of generating a paycheck...If there is a discrepancy
25 between the badge swiping record and the timecard, the signed hardcopy timecard will be the
26 prevailing document." As a result of Defendants' policies/practices of only compensating for
27 scheduled hours of work as opposed to all hours worked, Defendants failed to compensate
28 Plaintiff and other non-exempt employees for all minimum and overtime wages earned.

1 11. During Plaintiff's employment with Defendants, Defendants utilized an online job
2 management system that required Plaintiff and other non-exempt employees to log onto
3 Defendants' website to check the location of their job assignment for the next day as well as the
4 scheduled start time. Defendants' "Work Assignment Policy" provides, "Each Crew member,
5 Supervisor and Assistant Supervisor is responsible for knowing their schedule by checking the
6 website...each night after 5:30 p.m....It is your responsibility to check the schedule each night
7 after 5:30 p.m., and to be at the address listed at the time listed as the Start Time." Despite
8 requiring Plaintiff and other non-exempt employees to log in and check Defendants' website each
9 day after 5:30 p.m. by using their personal cellular phone or personal computer, Plaintiff and other
10 non-exempt employees were never compensated for the time spent logging on and checking
11 Defendants' website. As a result, Plaintiff and other non-exempt employees were deprived of all
12 minimum and overtime wages.

13 12. During Plaintiff's employment with Defendants, Defendants failed to compensate
14 Plaintiff for all required travel time. Specifically, Defendants required Plaintiff to travel to
15 various work sites using her personal vehicle, however, Defendants only compensated Plaintiff
16 and other non-exempt employees for travel time if "[e]mployees drive more than 70 miles to a
17 job." As a result of Defendants policies and/or practices which fail to compensate non-exempt
18 employees for all required travel time, Defendants failed to compensate Plaintiff and other non-
19 exempt employees for all minimum and overtime wages.

20 13. Furthermore, Defendants required Plaintiff and other non-exempt employees to
21 attend a monthly safety meeting at Defendants' yard in Pomona, California. On these days,
22 Plaintiff and other non-exempt employees were required to travel from their assigned job site to
23 Defendants' yard to attend the safety meeting. Despite Plaintiff and other non-exempt employees
24 working over 8.0 hours on these days to attend the required safety meetings, Defendants would
25 only compensate Plaintiff and other non-exempt employees for 8.0 hours on these days, resulting
26 in a further failure to compensate for all minimum and overtime wages owed.

27 14. Defendants failed to provide Plaintiff and other non-exempt employees with all
28 legally compliant meal periods because Defendants failed to provide Plaintiff and other non-

1 exempt employees with a timely, duty-free, and uninterrupted 30-minute meal period
2 commencing before the end of the fifth hour of work. Although Plaintiff's shift regularly began
3 at 6:00 a.m., Plaintiff was often not provided with a meal period until after 11:00 a.m. due to work
4 demands, which is after the conclusion of Plaintiff's fifth hour of work. In the event that a legally
5 compliant meal period was not in fact provided, Plaintiff and other non-exempt employees were
6 not paid the meal period premium required by Labor Code § 226.7. Upon information and belief,
7 during at least a portion of the putative class period, Defendants maintained no payroll code or
8 other mechanism for paying meal period premiums when Defendants failed to provide a legally
9 compliant meal period to Plaintiff and other non-exempt employees.

10 15. Plaintiff and other non-exempt employees were not authorized and permitted to
11 take all required rest periods due to Defendants' rest period policies/practices, which upon
12 information and belief, fail to authorize and permit all rest periods for every four hours worked,
13 or major fraction thereof. Specifically, during Plaintiff's employment with Defendants,
14 Defendants only authorized and permitted Plaintiff and other non-exempt employees who worked
15 shifts of at least eight hours to take one unpaid combined meal and rest period of one hour.
16 Because this combined one-hour meal and rest period was unpaid, Defendants failed to authorize
17 and permit all legally-compliant rest periods. Furthermore, Defendants' departure from the
18 preferred rest period schedule for an 8-hour shift, i.e., one rest period falling on either side of the
19 meal period, is unlawful and not permissible. *See Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th
20 1027 ("[A] departure from the preferred schedule is permissible only when the departure (1) will
21 not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would
22 be imposed on the employer by implementing the preferred schedule."). Despite failing to
23 authorize and permit rest periods as required under California law, Defendants failed to pay
24 Plaintiff and other non-exempt employees one hour of rest period premium for each day they
25 experienced a rest period violation as required by Labor Code Section 226.7. Upon information
26 and belief, Defendants also failed to maintain a mechanism for payment of rest period premium
27 payments as required by Labor Code Section 226.7.

28 16. During Plaintiff's employment with Defendants, Plaintiff worked in excess of

eight (8) hours per workday and/or in excess of forty (40) hours per workweek, but did not receive overtime compensation at one and one-half times his regular rate of pay for working overtime hours. Specifically, Plaintiff received non-discretionary incentive pay, including “Fringe Benefits” and/or other forms of pay that are not excludable from an employee’s “regular rate” of pay (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite Defendants’ payment of Incentive Pay to Plaintiff, Defendants failed to properly calculate Plaintiff’s “regular rate” of pay, thereby causing Plaintiff to be underpaid for his required overtime wages.

17. Defendants required Plaintiff and other non-exempt employees to use their personal cellular phone and/or personal computers to log onto Defendants’ website to check their work schedules and to communicate with other employees and Defendants’ supervisors and/or managers, however, Defendants failed to reimburse Plaintiff and other non-exempt employees for the use of their personal cellular phones and/or personal computers for business purposes. Additionally, although Defendants required Plaintiff and other non-exempt employees to use their personal vehicles to travel to various job sites, Defendants failed to reimburse Plaintiff and other non-exempt employees for all mileage related expenses.

18. As a result of Defendants’ failure to pay all overtime and minimum wages, and all meal and rest period premiums, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff. Furthermore, Defendants issued facially deficient wage statements to Plaintiff and other non-exempt employees which fail to list all applicable rates of pay and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9). For example, during the pay period of 11/11/2019 to 11/17/2019, Plaintiff earns \$638.00 in “Regular” earnings, however, there is no rate of pay or corresponding number of hours worked associated with this payment.

19. As a further result of Defendants’ failure to compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants failed to pay Plaintiff and other non-exempt employees all wages owed at the time of their separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

20. **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 eight (8) hours per day and/or forty (40) hours per week and: (i) received Incentive Pay during a corresponding time period; and/or (ii) were subject to Defendants' timekeeping policies/practices; and/or (iii) were required to attend monthly safety meetings; and/or (iv) were subject to Defendants' "Work Assignment Policy," during the four years immediately preceding the filing of the Complaint through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping policies/practices; and/or (ii) were required to attend monthly safety meetings; and/or (iii) were subject to Defendants' "Work Assignment Policy," during the four years immediately preceding the filing of the Complaint through the present.
- c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of the Complaint through the present.
- d. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes commencing prior to the end of the fifth hour of work, during the four years immediately preceding the filing of the Complaint through the present.
- e. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who were not reimbursed for the use of their personal cellular phones, personal computers, and/or personal vehicles, during the four years immediately preceding the filing of the Complaint through the present.

f. The Wage Statement Class consists of: (i) all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement; and/or (ii) all of Defendants' current and former non-exempt employees in California who earned "Regular" wages and received at least one wage statement, during the one year immediately preceding the filing of the Complaint through the present.

g. The Waiting Time Class consists of all formerly employed members of the Overtime Class, Minimum Wage Class, Meal Period Class and/or Rest Period Class, who separated their employment from Defendants during the three years immediately preceding the filing of the Complaint through the present.

21. **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 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.

22. **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:

- i. Whether Defendants failed to properly include all forms of Incentive Pay when computing the respective regular rates for members of the Overtime Class;
- ii. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

- 1 v. Whether Defendants provided meal and/or rest period premium payments for non-
2 compliant meal and/or rest periods;
- 3 vi. Whether Defendants furnished legally compliant wage statements to members of
4 the Wage Statement Class pursuant to Labor Code § 226; and
- 5 vii. Whether Defendants’ policies and/or practices for the timing and amount of
6 payment of final wages to members of the Waiting Time Class at the time of
7 separation from employment were unlawful.

8 **23. Predominance of Common Questions:** Common questions of law and fact
9 predominate over questions that affect only individual members of the Classes. The common
10 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
11 and/or practices applicable to each individual class member, such as Defendants’ uniform
12 timekeeping policies/practices, rest period policies/practices, and meal period policies/practices.
13 As such, the common questions predominate over individual questions concerning each
14 individual class member’s showing as to their eligibility for recovery or as to the amount of their
15 damages.

16 **24. Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
17 Plaintiff was employed by Defendants as non-exempt employees in California during the
18 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
19 herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime and
20 minimum wages, was not authorized and permitted to take all legally-compliant rest periods, was
21 not provided all required meal periods, did not receive accurate, itemized wage statements, was
22 not reimbursed for all business expenditures, and was not paid all wages owing at the termination
23 of employment.

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

1 prosecuting this action on behalf of the members of the Classes.

2 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
3 an important public interest in establishing minimum working conditions and standards in
4 California. These laws and labor standards protect the average working employee from
5 exploitation by employers who have the responsibility to follow the laws and who may seek to
6 take advantage of superior economic and bargaining power in setting onerous terms and
7 conditions of employment. The nature of this action and the format of laws available to Plaintiff
8 and members of the Classes make the class action format a particularly efficient and appropriate
9 procedure to redress the violations alleged herein. If each employee were required to file an
10 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
11 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
12 their vastly superior financial and legal resources. Moreover, requiring each member of the
13 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
14 employees who would be disinclined to file an action against their former and/or current employer
15 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
16 employment. Further, the prosecution of separate actions by the individual class members, even
17 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
18 with respect to the individual class members against Defendants herein; and which would
19 establish potentially incompatible standards of conduct for Defendants; and/or legal
20 determinations with respect to individual class members which would, as a practical matter, be
21 dispositive of the interest of the other class members not parties to adjudications or which would
22 substantially impair or impede the ability of the class members to protect their interests. Further,
23 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
24 individual prosecution considering all of the concomitant costs and expenses attending thereto.
25 As such, the Classes identified in Paragraph 20 are maintainable as a Class under § 382 of the
26 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 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

9 29. At all times relevant herein, Defendants were required to properly compensate
10 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
11 hours worked pursuant to Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires
12 an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of
13 pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the
14 workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the
15 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
16 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
17 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
18 Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

19 30. Defendants’ policy/practice of requiring overtime work and not paying at the
20 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
21 1194, and 1198; and Wage Order 16.

22 31. The foregoing policies/practices alleged herein are unlawful and create entitlement
23 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
24 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
25 attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
26 1194, and 1198; and Code of Civil Procedure § 1021.5.

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

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

33. Wage Order 16, § 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. At all relevant times herein, Defendants failed to conform its 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 16.

34. 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.

35. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 16 § 18(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

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1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 37. Wage Order 16, § 11 and California Labor Code §§ 226.7, 516, 558, and 1198
6 establish the right of employees to be authorized and permitted to take a paid rest period of at
7 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

8 38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
9 of the Rest Period Class to take all required and legally-compliant rest periods, and failed to pay
10 rest period premium wages when rest periods were not authorized and permitted.

11 39. The foregoing violations create an entitlement to recovery by Plaintiff and
12 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
13 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
14 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

15 **FOURTH CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed in their affirmative obligation to provide all of their non-exempt employees in California,
21 including Plaintiff and members of the Meal Period Class, with all legally-compliant meal periods
22 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
23 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
24 of the Meal Period Class at their respective regular rates of pay, in accordance with California
25 Labor Code §§ 204, 210, 226.7, and 512.

26 42. As a result, Defendants are responsible for paying premium compensation for meal
27 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 16,
28 including interest thereon, statutory penalties, civil penalties, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and members of the Wage Statement Class with complete and accurate wage statements with
8 respect to their total gross wages earned, and total net wages earned during the pay period, in
9 violation of Labor Code § 226 *et seq.*

10 45. Defendants' failure in furnishing Plaintiff and members of the Wage Statement
11 Class with complete and accurate itemized wage statements resulted in actual injury, as said
12 failures led to, among other things, the non-payment of all earned overtime wages and deprived
13 them of the information necessary to identify the discrepancies in Defendants' reported data.

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

18 **SIXTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

20 **(AGAINST ALL DEFENDANTS)**

21 47. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
23 an employer to pay all wages earned immediately at the time of termination of employment in the
24 event the employer discharges the employee or the employee provides at least 72 hours of notice
25 of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
26 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
27 employee's last date of employment.

28 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
2 at the time of their separation which include, among other things, underpaid overtime wages and
3 minimum wages and meal and rest period premiums. Further, Plaintiff is informed and believes,
4 and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue
5 to fail to pay members of the Waiting Time Class all earned wages at the end of employment in
6 a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
7 pay all wages was willful within the meaning of Labor Code § 203.

8 50. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
9 Time Class their earned wages upon separation from employment results in a continued payment
10 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
11 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
12 plus reasonable attorneys' fees and costs of suit.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR ALL NECESSARY BUSINESS EXPENDITURES**
15 **(AGAINST ALL DEFENDANTS)**

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

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

21 53. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
22 states that "any contract or agreement, express or implied, made by any employee to waive the
23 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
24 employee or his personal representative of any right or remedy to which he is entitled under the
25 laws of this State."

26 54. Due to Defendants' unlawful policy and practice of requiring employees to use
27 their personal cellular phones and vehicles for work purposes, and failing to compensate
28 employees for the use of their personal cellular phones and vehicles, Defendants have violated

1 Labor Code § 2802.

2 55. As a proximate result of Defendants' policies and/or practices in violation of Labor
3 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages
4 in sums, which will be shown according to proof.

5 56. Plaintiff and members of the Employee Expense Class are entitled to attorneys'
6 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

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

11 **EIGHTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(AGAINST ALL DEFENDANTS)**

14 58. Plaintiff re-alleges and incorporates by referenced all previous paragraphs.

15 59. Defendants have engaged and continue to engage in unfair and/or unlawful
16 business practices in California in violation of California Business and Professions Code § 17200
17 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
18 periods and authorize and permit all required rest periods, or pay premium payments for missed
19 or non-compliant meal and rest periods, failing to reimburse employees for all necessary business
20 expenditures, failing to issue accurate and itemized wage statements, and failing to pay all final
21 wages owed to employees upon their separation from employment with Defendants.

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

27 61. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
28 herein, Plaintiff for himself and on behalf of the members of the Classes, seek full restitution of

monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT (AGAINST ALL DEFENDANTS)

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

65. 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.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, 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

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

- 2 a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
3 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
4 and 1198;
- 5 b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
6 Wage Class, and other aggrieved employees in violation of Labor Code §§
7 1182.12, 1194, 1194.2, 1197, and 1198;
- 8 c. Failing to authorize and permit all legally required rest periods, and failure to pay
9 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
10 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
11 516, 558, and 1198;
- 12 d. Failing to provide all legally required meal periods, and failure to pay meal period
13 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
14 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
15 512, 558, and 1198;
- 16 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
17 employees with complete, accurate, itemized wage statements in violation of
18 Labor Code § 226;
- 19 f. 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 g. Failing to reimburse Plaintiff, the Reimbursement Class, and other aggrieved
23 employees for all necessary work expenses incurred in violation of Labor Code §§
24 2802 and 2804;
- 25 h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
26 twice during each calendar month in violation of Labor Code § 204; and
- 27 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
28 employees in violation of Labor Code § 1174.

66. On October 19, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 65 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not 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.

67. 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 October 19, 2019, and the present.

68. 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, 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 §§ 1182.12, 1194, 1194.2, 1197, and 1198;

1 6. Upon the Third Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

3 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

5 8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant
6 to Labor Code § 226 *et seq.*;

7 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code §§ 201-203;

9 10. Upon the Seventh Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

11 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
12 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
14 *seq.*;

15 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
17 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
18 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
19 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, based on
27 the Labor Code violations identified in Paragraph 65 (a)-(i);

28 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.*, 2802(c), and 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: December 28, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: December 28, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Paul K. Haines
Attorneys for Plaintiff