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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/22/2021 at 11:20:00 AM

Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PRIMO R. RUBIO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LOCATOR SERVICES, INC., dba Able Patrol
and Guard (APG), a California Corporation; and
DOES 1 through 100,

Defendants.

CASE NO. 37-2020-00046275-CU-OE-CTL

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194,
1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE § 226.7, 516, 558);
- (5) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE §§ 226, *et seq.*);
- (6) **UNFAIR COMPETITION (BUS. &
PROF. CODE §§ 17200, *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE
§ 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Primo R. Rubio (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 Locator Services, Inc., dba Able Patrol and Guard (APG), a California
4 Corporation; and Does 1 through 100, inclusive (collectively “Defendants”), and on information
5 and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 class action for recovery of unpaid wages and penalties under California Labor Code §§ 204,
9 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, California
10 Business and Professions Code §§ 17200, *et seq.*, and Industrial Welfare Commission Wage
11 Order No. 4 (“Wage Order 4”), in addition to seeking declaratory relief and restitution. This
12 class action is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
14 controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

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

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times
24 herein, Plaintiff was, and currently is, a California resident, residing in the county of San Diego.
25 During the four years immediately preceding the filing of the Complaint in this action and within
26 the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
27 employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of
28 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has

1 been deprived of the rights guaranteed to his by California Labor Code §§ 204, 226, 226.7, 510,
2 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, California Business and
3 Professions Code §§ 17200, *et seq.* (Unfair Competition), and Wage Order 4, which sets
4 employment standards for “Professional, Technical, Clerical, Mechanical and Similar
5 Occupations,” including security guards.

6 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
8 do) business by providing detective and security guard services, and employed Plaintiff and other
9 similarly situated non-exempt employees within San Diego County and the State of California
10 and, therefore, were (and are) doing business in San Diego County and the State of California.

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

20 6. Plaintiff is informed, and believes, and based thereon alleges, that at all times
21 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
22 Classes (as defined in Paragraph 15).

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

omissions complained of herein.

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 acted within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes (as defined in Paragraph 15).

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a line of business throughout San Diego County and California that provides detective and security guard services. Plaintiff has been employed by Defendants as a non-exempt “security guard” since approximately May 2016.

10. During Plaintiff’s employment with Defendants, Plaintiff did not clock in or out for his shifts, but rather, an administrative employee would purportedly note his presence when he came in for his shifts and when he left for the day, and presumably, the administrative employee would keep track of Plaintiff’s work hours. Upon information and belief, Plaintiff’s actual work hours were not captured by this informal timekeeping system. As a result of Defendants’ timekeeping policies and/or practices, Defendants failed to compensate Plaintiff and other non-exempt employees for all hours worked, and therefore, Plaintiff and other non-exempt employees were deprived of all required minimum and overtime wages earned.

11. During Plaintiff’s employment with Defendants, Plaintiff routinely worked in excess of eight hours per work day and/or more than forty hours per work week, but did not receive overtime compensation equal to one and one-half times his regular rate of pay for all overtime hours worked. Specifically, Defendants paid Plaintiff at multiple rates of pay for work performed during the same pay period, however, Defendants failed to accurately calculate Plaintiff’s regular rate of pay for overtime purposes by failing to use a weighted average method, thereby causing Plaintiff to be underpaid for required overtime wages in violation of California law.

12. Defendants also failed to provide Plaintiff and other non-exempt employees with all required meal periods because, upon information and belief, Defendants did not maintain a

1 lawful meal period policy and failed to provide for duty-free meal periods to Plaintiff and other
2 non-exempt employees. Assuming, *arguendo*, that Plaintiff and Defendants entered into a lawful
3 on-duty meal period agreement, such an agreement inherently concedes that the nature of
4 Plaintiff's work precluded lawful rest periods.

5 13. Accordingly, Defendants also failed to authorize and permit Plaintiff and other
6 non-exempt employees to take all required rest periods because, upon information and belief,
7 Defendants did not maintain a lawful rest period policy and failed to authorize and permit non-
8 exempt employees to be actually relieved of all work during rest periods, due to the purported
9 on-duty nature of their work. Additionally, despite Defendants' failure to provide Plaintiff with
10 all meal and rest periods to which he was legally entitled due to Defendants' uniform and
11 unlawful policies and/or practices, upon information and belief, Defendants did not provide
12 Plaintiff with an hour of pay at his regular rate for each meal and rest period violation as required
13 by Labor Code § 226.7. Further, upon information and belief, Defendants maintained no payroll
14 code or other mechanism for paying meal and rest period premiums when Defendants failed to
15 provide a legally compliant meal and/or rest period.

16 14. As a result of Defendants' failure to pay all earned minimum and overtime wages,
17 as well as its failure to pay all required meal and rest period premium wages, Defendants
18 maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.
19 Furthermore, the wage statements issued by Defendants were facially deficient in that they failed
20 to list all applicable hourly rates of pay in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9). Specifically,
22 the wage statements issued by Defendants fail to list a rate of pay for double-time (denoted as
23 "DT" on wage statements).

24 **CLASS ACTION ALLEGATIONS**

25 15. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
26 following Classes pursuant to Section 382 of the Code of Civil Procedure:

- 27 a. The Minimum Wage Class consists of all of Defendants' current and former non-
28 exempt employees in California who were subjected to Defendants' timekeeping

policies/practices, during the four years immediately preceding the filing of the Complaint through the present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8 hours per day and/or 40 hours per week and: (i) were subjected to Defendants' timekeeping policies/practices; and/or (ii) received multiple rates of pay during a corresponding pay period, during the four years immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked a shift in excess of 5.0 hours and were not provided with an off-duty 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.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked a shift in excess of 3.5 hours, during the four years immediately preceding the filing of the Complaint through the present.

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

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than one hundred (100) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

17. **Common Questions of Law and Fact Predominate/Well Defined Community**

1 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
2 situated employees, which predominate over questions affecting only individual members
3 including, without limitation to:

- 4 i. Whether Defendants' timekeeping policies and/or practices resulted, over a
5 period of time, in the failure to properly compensate members of the Overtime
6 and Minimum Wage Classes for all hours worked;
- 7 ii. Whether Defendants violated the applicable Labor Code provisions, including,
8 but not limited to §§ 510 and 1194, by requiring overtime work and not paying
9 for said work according to the overtime laws of the State of California;
- 10 iii. Whether Defendants provided legally compliant meal periods to members of the
11 Meal Period Class;
- 12 iv. Whether Defendants authorized and permitted legally compliant rest periods to
13 members of the Rest Period Class;
- 14 v. Whether Defendants provided meal and rest period premium payments for non-
15 compliant meal and rest periods; and
- 16 vi. Whether Defendants furnished legally compliant wage statements to members of
17 the Wage Statement Class pursuant to Labor Code § 226.

18
19 18. **Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual members of the Classes. The common
21 questions of law set forth above are numerous and substantial and stem from Defendants'
22 policies and/or practices applicable to each individual class member, such as Defendants'
23 timekeeping, and meal and rest period policies/practices. As such, these common questions
24 predominate over individual questions concerning each individual class member's showing as
25 to his or her eligibility for recovery or as to the amount of his or her damages.

26 19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
27 Plaintiff was employed by Defendants as a non-exempt employee in California during the
28 statutes of limitation applicable to each cause of action pled in the Complaint in this action. As

1 alleged herein, Plaintiff, like the members of the Classes, was deprived of all minimum and
2 overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, and
3 was furnished with inaccurate and incomplete wage statements.

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

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

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

22. As such, the Classes identified in Paragraph 15 are maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

24. Wage Order 4, § 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.

25. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to Defendants' failure to accurately record Plaintiff's work hours. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated 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 4.

26. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission 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.

27. As a direct and proximate result of Defendants' unlawful conduct as alleged

1 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including, but
2 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
3 entitled to recover economic and statutory damages and penalties and other appropriate relief as
4 a result of Defendants' violations of the California Labor Code and Wage Order 4.

5 28. Defendants' practice and uniform administration of corporate policy regarding
6 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff
7 and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum
8 wages, liquidated damages, including interest thereon, statutory penalties, civil penalties,
9 attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 558, 1194,
10 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **(AGAINST ALL DEFENDANTS)**

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

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

19 31. At all times relevant herein, Defendants were required to properly compensate
20 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to Labor
21 Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee
22 "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours
23 per workday and/or in excess of 40 hours of work in the workweek. Wage Order 4, § 3 also
24 requires an employer to pay an employee double the employee's regular rate of pay for work in
25 excess of twelve hours each workday and/or for work in excess of eight hours on the seventh
26 consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours,
27 but did not compensate Plaintiff or members of the Overtime Class at one and one-half times
28 their regular rate of pay for such hours.

1 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 regularly and systematically, as a policy and practice, did not pay Plaintiff and members of the
3 Overtime Class for all overtime hours worked as a result of Defendants' timekeeping
4 policies/practices.

5 33. The foregoing policies and practices are unlawful and create entitlement to
6 recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount
7 of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
8 costs of suit according to Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198, and Code of
9 Civil Procedure § 1021.5.

10 **THIRD CAUSE OF ACTION**
11 **MEAL PERIOD VIOLATIONS**
12 **(AGAINST ALL DEFENDANTS)**

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

14 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 failed in their affirmative obligation to provide all of their non-exempt employees, including
16 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance
17 with the mandates of the California Labor Code and Wage Order 4, for the reasons set forth in
18 the factual allegations and class definitions sections of this Complaint.

19 36. As a result, Defendants are responsible for paying premium compensation for
20 meal period violations, including interest thereon, statutory penalties, attorneys' fees, and costs
21 of suit pursuant to Wage Order 4, Labor Code §§ 226.7, 512, and 558, and Civil Code §§ 3287(b)
22 and 3289.

23 **FOURTH CAUSE OF ACTION**
24 **REST PERIOD VIOLATIONS**
25 **(AGAINST ALL DEFENDANTS)**

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

27 38. Wage Order 4, § 12 and California Labor Code §§ 226.7, 516, and 558 establish
28 the right of employees to be provided with a rest period of at least ten (10) minutes for each four

(4) hour period worked, or major fraction thereof.

39. Plaintiff is informed and believes, and based thereon alleges, that the rest period policies that Defendants maintained were unlawful, as they failed to provide for any off-duty rest periods. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation in accordance with Labor Code § 226.7.

40. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Wage Order 4, Labor Code §§ 226.7, 516, and 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all overtime and minimum wages earned, all meal and rest period premium wages earned, and all applicable hourly rates of pay, in violation of Labor Code § 226.

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

46. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code §§ 17200, *et seq.* by failing to pay Plaintiff and the Classes all minimum and overtime wages, failing to provide all legally required meal and rest periods or make premium payments in lieu thereof, and knowingly failing to furnish accurate and complete itemized wage statements in violation of Labor Code § 226.

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

48. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks 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.

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

50. Plaintiff was compelled to retain the services of counsel to file this court action to protect her 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.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

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

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

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

19
20 53. On December 17, 2020, Plaintiff notified Defendants via certified mail, and
21 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
22 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
23 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
24 California Labor Code identified in Paragraph 52 (a)-(h). Now that sixty-five days have passed
25 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
26 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
27 administrative requirements for bringing a claim under the Private Attorneys General Act with
28 respect to these violations.

54. 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 December 17, 2019, and the present.

55. 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).

PRAAYER

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 payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 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, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §§ 226, *et seq.*;
8. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code §§ 17200, *et seq.*;

1 9. Upon the Seventh 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 for each subsequent violation or willful or intentional
5 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
6 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
7 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
8 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
9 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
10 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
11 \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay
12 period for those violations of the Labor Code for which no civil penalty is specifically provided,
13 based on the Labor Code violations identified in Paragraph 52 (a)-(h);

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

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

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

20 Dated: February 22, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

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22 By:



Paul K. Haines
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: February 22, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff