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**ELECTRONICALLY
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SAN LUIS OBISPO SUPERIOR COURT

BY 

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

STEPHEN FIANT, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ERNIE BALL, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: 21CV-0016

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

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (2) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (3) WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (4) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (6) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Stephen Fiant (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against Defendants
3 Ernie Ball, Inc., a California Corporation, and DOES 1 to 100 (collectively “Defendants”),
4 inclusive, and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
8 *et seq.*, 226.7, 510, 516, 558, 1194, 1198, and 2698 *et seq.*, and Business and Professions Code §
9 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 1-2001 (“Wage Order 1”), in
10 addition to seeking declaratory relief and restitution. This action is brought pursuant to California
11 Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the
12 California Labor Code because the amount in controversy exceeds this Court’s jurisdictional
13 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 San Luis Obispo. Defendants own, maintain offices, transact business, have an agent
18 or agents within the County of San Luis Obispo, and/or otherwise are found within the County of
19 San Luis Obispo, and Defendants are within the jurisdiction of this Court for purposes of service
20 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 and resides in the County of San Luis Obispo.
24 During the four years immediately preceding the filing of this action and within the statute of
25 limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
26 Defendants as a non-exempt employee in San Luis Obispo. Plaintiff was, and is, a victim of
27 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
28 been deprived of the rights guaranteed by California Labor Code §§ 201-204, 226 *et seq.*, 226.7,

510, 516, 558, 1194, 1198, and 2698, *et seq.*, Business and Professions Code § 17200 *et seq.*, and Wage Order 1, which sets employment standards for the manufacturing industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business within the County of San Luis Obispo and the State of California by employing non-exempt employees in various capacities.

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 further 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 (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and based 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, 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 were acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise.

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

GENERAL FACTUAL ALLEGATIONS

9. Defendants are in the business of manufacturing electric and acoustic guitar strings, bass strings, and guitar accessories for commercial sale. Plaintiff worked for Defendants as a non-exempt employee from approximately September 16, 2016 until approximately July 27, 2020, at Defendants' San Luis Obispo, California location. Plaintiff's primary duties included metalworking, machine operation, and the assembly and fabrication of various tools.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendants maintained an unlawful policy/practice of requiring Plaintiff and other non-exempt employees to perform work pursuant to an invalid alternative workweek schedule ("AWS") agreement for purposes of overtime computation, in violation of Wage Order 1 § 3(B) and (C), and Labor Code § 511. Upon information and belief, Defendants failed to comply with the proper election procedures for implementing a lawful AWS, including but not limited to Defendants failure to obtain at least two-thirds approval for the AWS from the affected employees in the affected work unit. As a result, the purported AWS agreement is invalid, and Plaintiff and other non-exempt employees did not receive all overtime wages earned.

11. Additionally, Defendants paid Plaintiff and other non-exempt employees non-discretionary bonuses and other forms of pay that are not excludable when calculating an employee's regular rate of pay (hereinafter collectively referred to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt employees, Defendants failed to include all forms of Incentive Pay when calculating employees' respective regular rates of pay, thereby causing Plaintiff and other non-exempt employees to be underpaid for all required overtime wages.

12. Further, Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take all legally complaint rest periods to which they were entitled, due to Defendants' unlawful rest period policies/practices. Upon information and belief, Defendants maintained a facially unlawful rest period policy that required Plaintiff and other non-exempt

employees to remain on Defendants' premises during rest periods and as a result failed to relinquish all control over how Plaintiff and other non-exempt employees spent their break time, in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 ("[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time."). On those occasions where Plaintiff and other non-exempt employees were not authorized to take all legally compliant rest periods to which they were entitled, Defendants failed to pay Plaintiff and other non-exempt employees an additional hour of rest period premium pay, as required by Labor Code § 226.7.

13. As a result of Defendants' failure to pay all overtime wages and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees, and failed to timely pay Plaintiff and other non-exempt employees for all final wages owed at the time of their respective separations from Defendants' employment.

14. Pursuant to the California Emergency Rules Related to COVID-19, the statute of limitations for the causes of action alleged in this lawsuit were tolled for an additional 178 days. *See* Emergency Rule 9(a) ("Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.")

CLASS ACTION ALLEGATIONS

15. **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 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) worked pursuant to Defendants' purported AWS work schedule; and/or (ii) received Incentive Pay and worked overtime hours during the corresponding time period, during the four years immediately preceding the filing of this action through the present.

b. The Rest Period Class consists of all of 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 this action through the present.

c. The Wage Statement Class consists of all members of the Overtime Class and/or Rest Period Class who received a wage statement from Defendants, during the one year immediately preceding the filing of this action through the present.

d. The Waiting Time Class consists of all members of the Overtime Class and/or Rest Period Class who separated their employment with Defendants, during the three years immediately preceding the filing of this action 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 are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) 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 of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by requiring members of the Overtime Class to perform work in excess of 8 hours per day and/or 40 hours per week and not paying for said work in accordance with the overtime laws of the State of California;

ii. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

iii. Whether Defendants paid rest period premium payments for non-compliant rest periods pursuant to Labor Code § 226.7;

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

v. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

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

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute of limitations periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the members of the Classes, was not compensated for overtime hours, and was not authorized and permitted to take legally-compliant rest periods or paid a rest period premium in lieu thereof, was furnished with inaccurate and incomplete wage statements, and did not receive all final wages owed at the time of his separation of employment.

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

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment. The nature of this action and the format of laws available to Plaintiff
3 and members of the Classes make the class action format a particularly efficient and appropriate
4 procedure to redress the violations alleged herein. If each employee was required to file an
5 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
6 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
7 their vastly superior financial and legal resources. Moreover, requiring each member of the
8 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
9 employees who would be disinclined to file an action against their former and/or current employer
10 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
11 employment. Further, the prosecution of separate actions by the individual class members, even
12 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
13 with respect to the individual class members against Defendants herein; and which would
14 establish potentially incompatible standards of conduct for Defendants; and/or legal
15 determinations with respect to individual class members which would, as a practical matter, be
16 dispositive of the interest of the other class members not parties to adjudications or which would
17 substantially impair or impede the ability of the class members to protect their interests. Further,
18 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
19 individual prosecution considering all of the concomitant costs and expenses attending thereto.
20 As such, the Classes (as defined herein) are maintainable under § 382 of the Code of Civil
21 Procedure.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME WAGES**

24 **(AGAINST ALL DEFENDANTS)**

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

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

24. Defendants maintained an unlawful policy/practice of requiring Plaintiff and members of the Overtime Class to perform work pursuant to an invalid AWS agreement for purposes of overtime computation, in violation of Wage Order 1 § 3(B) and (C), and Labor Code § 511. Upon information and belief, Defendants failed to comply with the proper election procedures for implementing a lawful AWS, including but not limited to Defendants failure to obtain at least two-thirds approval for the AWS from the affected employees in the affected work unit. As a result, the purported AWS agreement is invalid, and Plaintiff and other non-exempt employees did not receive all overtime wages earned.

25. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek.

26. At all times relevant herein, Defendants caused Plaintiff and other non-exempt employees to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

4 30. As alleged herein, and due to Defendants' unlawful rest period policies and/or
5 practices, Defendants did not authorize and permit members of the Rest Period Class to take all
6 lawful rest periods to which they were legally entitled. Despite Defendants' violations,
7 Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest
8 Period Class at their respective regular rates of pay for each violation in accordance with Labor
9 Code § 226.7.

10 31. The foregoing policies and practices are unlawful and create an entitlement to
11 recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount
12 of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
13 costs of suit according to Labor Code §§ 226.7, 516, and 558, Wage Order 1, and Code of Civil
14 Procedure § 1021.5.

15 **THIRD CAUSE OF ACTION**
16 **WAGE STATEMENT PENALTIES**
17 **(AGAINST ALL DEFENDANTS)**

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

19 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
21 and the Wage Statement Class with accurate and complete itemized wage statements that
22 included, among other requirements, all overtime wages owed and all rest period premium wages
23 earned, total gross wages earned, all rates of pay, and total net wages earned, in violation of Labor
24 Code § 226.

25 34. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
26 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
27 to, among other things, the non-payment of all overtime wages owed, all rest period premium
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1 wages, and deprived them of the information necessary to identify the discrepancies in
2 Defendants' reported data.

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

7 **FOURTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(AGAINST ALL DEFENDANTS)**

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

11 37. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
12 an employer to pay all wages earned immediately at the time of separation of employment in the
13 event the employer discharges the employee, or if the employee provides at least 72 hours of
14 notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her
15 intent to quit, said employee's wages become due and payable no later than 72 hours upon said
16 employee's last date of employment.

17 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
19 at the time of their separation, which includes, among other things, underpaid overtime wages,
20 and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon
21 alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay
22 members of the Waiting Time Class all earned wages at the end of employment in a timely manner
23 pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within
24 the meaning of Labor Code § 203.

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

3 **FIFTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(AGAINST ALL DEFENDANTS)**

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

7 41. Defendants have engaged and continue to engage in unfair and/or unlawful
8 business practices in California in violation of California Business and Professions Code § 17200,
9 *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages owed; failing to authorize
10 and permit all required rest periods or pay premium payments in lieu thereof; failing to provide
11 accurate and complete wage statements; and failing to pay all final wages at the time of separation
12 from employment.

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

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

22 44. The acts complained of herein occurred within the four years immediately
23 preceding the filing of this action.

24 45. 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 they are entitled to recover under Code of Civil Procedure § 1021.5.

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

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

47. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, as 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 \$200.00 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 \$100.00 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 \$200.00 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 Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

b. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees’ respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;

- c. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- d. Failing to timely pay all earned wages to separating employees at the time of separation in violation of Labor Code §§ 201-203;
- e. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- f. Failing to pay Plaintiff and aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

48. On or around January 14, 2021, 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 47 (a)-(f). 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.

49. 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 January 14, 2020 and the present.

50. 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 recover under California Labor Code § 2699.

PRAYER

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

1 1. For an order certifying the proposed Classes;
2 2. For an order appointing Plaintiff as representative of the Classes;
3 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4 4. Upon the First Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6 5. Upon the Second Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8 6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code §
9 226 *et seq.*;
10 7. Upon the Fourth Cause of Action, for waiting time penalties pursuant to Labor Code
11 §§ 201-203;
12 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the
13 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
14 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
15 *seq.*;
16 9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other
17 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
18 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
19 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
20 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
21 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for
22 each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
23 \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor
24 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
25 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
26 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
27 employee per pay period for those violations of the Labor Code for which no civil penalty is
28 specifically provided.

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

3 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
4 218.5, 226, 1194, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

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7 Dated: March 22, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

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9 By:


Fletcher W. Schmidt
Attorney for Plaintiff

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12 **DEMAND FOR JURY TRIAL**

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

14
15 Dated: March 22, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

16
17 By:


Fletcher W. Schmidt
Attorney for Plaintiff

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3 **PROOF OF SERVICE**

4 *Stephen Fiant v. Ernie Ball, Inc.*

5 San Luis Obispo County Superior Court Case No. 21CV-0016

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF LOS ANGELES)

9 I am employed in the County of Los Angeles, State of California. I am over the age of
10 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite
11 180, El Segundo, California 90245.

12 On March 22, 2021, I served the foregoing document(s) described as:

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

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

15 Kathryn M. Eppright, Esq.
16 **ANDRE, MORRIS & BUTTERY, APLC**
17 1102 Laurel Lane
18 San Luis Obispo, CA 93401
19 Attorneys for Defendant ERNIE BALL, INC.

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

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

Executed on March 22, 2021, at El Segundo, California.

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Jonathan Ramirez