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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

SANTIAGO GUTIERREZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

M.M.C.L., INC. dba CALIFORNIA
LANDCARE, a California corporation; and
DOES 1 through 100,

Defendants.

Case No.: 30-2021-01182371-CU-OE-CXC

**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);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) WAITING TIME PENALIES
(LABOR CODE §§ 201-203);**
- (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**

Plaintiff Santiago Gutierrez (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendant M.M.C.L., Inc. dba California Landcare, a California corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code sections 201-204, 226 *et seq.*, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code section 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 5 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Orange. Defendants transact business within the County of Orange and/or otherwise are found within the County of Orange, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee, and

performed work for Defendants within the Counties of Orange, Los Angeles, and San Luis Obispo, among others. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code sections 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code section 17200 *et seq.* ("Unfair Competition Law"), and Wage Order 5, which sets employment standards for the public housekeeping 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 Orange and the State of California by operating a general contracting and construction company specializing in cement construction, and therefore, were (and are) doing business in the County of Orange 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 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, 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

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

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate a landscaping company specializing in landscape
10 maintenance. Plaintiff was employed by Defendants as a non-exempt employee from
11 approximately August 2019 until approximately March 24, 2020, although Plaintiff was paid in
12 cash for the first 2 to 3 months of his employment with Defendants, and did not begin to be paid
13 by payroll check until November 3, 2019. Plaintiff's primary job duties included landscaping and
14 maintenance work, such as trimming trees, planting seeds, and uprooting plants and flowers.

15 10. During Plaintiff's employment with Defendants, Defendants maintained no
16 system for recording Plaintiff's and other non-exempt employees' hours worked, and as a result
17 failed to compensate Plaintiff and other non-exempt employees for all hours actually worked.
18 Specifically, Defendants only paid Plaintiff and other non-exempt employees for an assumed 8-
19 hour shift, despite the fact that Plaintiff and other non-exempt employees routinely worked in
20 excess of 8-hours per shift. For example, Plaintiff was typically scheduled to work from 7:00 a.m.
21 to 3:30 p.m. with a 30-minute unpaid meal period, and was required to report to Defendants'
22 office location to pick up a company truck. Plaintiff would generally report to work at
23 approximately 6:50 a.m. and would immediately be put to work by Defendants loading the truck
24 and preparing for the workday. At the end of his shifts, Plaintiff would generally not be released
25 from work on time, and would not be able to return the company truck until 10 to 30 minutes after
26 3:30 p.m. Despite Plaintiff and other non-exempt employees routinely working in excess of 8-
27 hours per day and at times complaining about not receiving pay for all hours or required overtime
28 compensation, Defendants insisted on paying for only 8-hours per day. As a result of these

1 unlawful timekeeping policies/practices, Defendants failed to properly compensate Plaintiff and
2 other non-exempt employees for all hours worked, and deprived them of all required minimum
3 and overtime wages earned.

4 11. Throughout Plaintiff's employment, Defendants also failed to provide Plaintiff
5 and other non-exempt employees with all legally-compliant meal periods. Specifically,
6 Defendants' unlawful meal period policies/practices failed to provide timely, duty-free 30-minute
7 meal periods commencing before the end of the fifth hour of work. Defendants only allowed
8 Plaintiff and other non-exempt employees to take a single 1-hour meal period, which was often
9 not started by supervisors until after the end of the fifth hour of work. Additionally, Defendants
10 required Plaintiff and other non-exempt employees to remain at the jobsite for the entire meal
11 period, and Defendants' supervisors reprimanded and/or threatened Plaintiff and other non-
12 exempt employees with termination if they left the jobsite during meal periods. As a result,
13 Plaintiff and other non-exempt employees regularly did not receive timely and duty-free first meal
14 periods that commenced prior to the conclusion of the fifth hour of work. On occasions when
15 Plaintiff and other non-exempt employees were not provided with all lawful meal periods to
16 which they were entitled, Defendants failed to pay Plaintiff and other non-exempt employees an
17 additional hour of premium pay at their respective regular rates of pay for each workday in which
18 a meal period violation occurred, as required by Labor Code section 226.7. Upon information and
19 belief, Defendants failed to maintain pay codes for the payment of meal period premium payments
20 as required by Labor Code section 226.7.

21 12. Defendants' unlawful rest period policies/practices similarly failed to authorize
22 and permit Plaintiff and other non-exempt employees to take *any* duty-free 10-minute rest periods
23 for every four hours worked, or major fraction thereof. Rather, Defendants had a policy and/or
24 practice of unlawfully eliminating rest breaks by combining them into the meal period. As
25 discussed above, employees were not permitted to leave the jobsite during meal periods and
26 therefore even assuming that the combined meal and rest periods were otherwise valid rest periods
27 (which they were not), Defendants did not relieve employees of all employer control during rest
28 periods in violation of *Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 269 (2016) ("[O]ne

cannot square the practice of compelling employees to remain at the ready, *tethered by time and policy to particular locations* or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.”)(emphasis added). Despite Defendants’ failure to authorize and permit Plaintiff and other non-exempt employees to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7. Upon information and belief, Defendants failed to maintain pay codes for the payment of rest period premium payments as required by Labor Code section 226.7.

13. Additionally, Defendants required Plaintiff and other non-exempt employees to use their personal cell phones to communicate regularly with supervisors about work. Defendants also required Plaintiff and other non-exempt employees to purchase a company hat bearing Defendants’ logo. Despite requiring Plaintiff and other non-exempt employees to utilize their personal cell phones for work purposes and to purchase company apparel for work, Defendants failed to reimburse these non-exempt employees for all necessary business expenses associated with using their personal cell phones and purchasing company apparel, in violation of Labor Code section 2802. Upon information and belief, Defendants failed to maintain any policy for reimbursing employees for work-related expenses.

14. As a result of Defendants’ failure to pay all overtime wages, minimum wages, and meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees, and failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their respective separations of employment. Further, Defendants’ wage statements are also facially deficient due to a failure to include the address of the legal entity that is the employer, in violation of Labor Code § 226(a).

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CLASS ACTION ALLEGATIONS

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

- a. The Overtime Class consists of consists of all Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per workweek and were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- c. 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 their timekeeping records reflecting a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts, during the four years immediately preceding the filing of this action through the present.
- d. 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 this action through the present.
- e. The Reimbursement Class consists of all Defendants' current and former non-exempt employees in California who were required to use a personal cellular phone for work-related purposes and/or to purchase company apparel without reimbursement, during the four years immediately preceding the filing of this action through the present.

1 f. The Wage Statement Class consists of: (i) all members of the Overtime Class,
2 Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who received
3 a wage statement from Defendants; and/or (ii) all of Defendants' current and
4 former non-exempt employees in California who received a wage statement that
5 failed to list the address of the legal entity that is the employer, during the one year
6 immediately preceding the filing of this action through the present.

7 g. The Waiting Time Class consists of all members of the Overtime Class, Minimum
8 Wage Class, Meal Period Class, and/or Rest Period Class, who separated their
9 employment with Defendants during the three years immediately preceding the
10 filing of this action through the present.

11 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
12 joinder of all members would be unfeasible and not practicable. The membership of the Classes
13 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
14 number greater than fifty (50) individuals. The identity of such membership is readily
15 ascertainable via inspection of Defendants' employment records.

16 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
17 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
18 situated non-exempt employees, which predominate over questions affecting only individual
19 members including, without limitation to:

20 i. Whether Defendants violated the applicable Labor Code provisions, including, but
21 not limited to, sections 510 and 1194 by requiring members of the Overtime Class
22 to perform overtime work and not paying for said work in accordance with the
23 overtime laws of the State of California;

24 ii. Whether Defendants paid all minimum wages owed for all hours worked to
25 members of the Minimum Wage Class pursuant to Labor Code sections 1182.12,
26 1194, 1194.2 and 1197;

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- 1 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
- 2 properly compensate members of the Overtime Class and/or Minimum Wage
- 3 Class;
- 4 iv. Whether Defendants provided all legally compliant meal periods to members of
- 5 the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- 6 v. Whether Defendants authorized and permitted all lawful rest periods to members
- 7 of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- 8 vi. Whether Defendants correctly paid meal and/or rest period premium payments for
- 9 non-compliant meal and/or rest periods pursuant to Labor Code section 226.7;
- 10 vii. Whether Defendants failed to reimburse members of the Reimbursement Class for
- 11 all necessary business expenses incurred pursuant to Labor Code sections 2802
- 12 and 2804;
- 13 viii. Whether Defendants furnished legally compliant wage statements to members of
- 14 the Wage Statement Class pursuant to Labor Code section 226; and
- 15 ix. Whether Defendants paid all wages/compensation due upon separation to
- 16 members of the Waiting Time Class pursuant to Labor Code sections 201-203.

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

25 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
26 Plaintiff was employed by Defendants as a non-exempt employee in California during the
27 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
28 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum

wages owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages at his regular rate of pay for missed or non-compliant meal and rest periods, was not reimbursed for all necessary business expenses, was not provided with accurate, itemized 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 fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

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 take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would

1 establish potentially incompatible standards of conduct for Defendants; and/or legal
2 determinations with respect to individual class members which would, as a practical matter, be
3 dispositive of the interest of the other class members not parties to adjudications or which would
4 substantially impair or impede the ability of the class members to protect their interests. Further,
5 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
6 individual prosecution considering all of the concomitant costs and expenses attending thereto.
7 As such, the Classes identified herein are maintainable as a Class under section 382 of the Code
8 of Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

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

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

17 24. At all times relevant herein, Defendants were required to properly pay Plaintiff
18 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
19 Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee
20 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
21 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage
22 Order 5, § 3 also requires an employer to pay an employee double the employee’s regular rate of
23 pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the
24 seventh consecutive day of work in the workweek.

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

1 but did not properly compensate Plaintiff and the members of the Overtime Class at double their
2 regular rate of pay for all such hours.

3 26. The foregoing policies and practices are unlawful and create entitlement to
4 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
5 premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and
6 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
7 5, and Code of Civil Procedure § 1021.5.

8 **SECOND CAUSE OF ACTION**

9 **MINIMUM WAGE VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

12 28. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
13 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
14 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
15 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
16 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
17 wages and interest accrued thereon.

18 29. At all relevant times herein, Defendants failed to conform their pay practices to
19 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
20 for all hours worked including, but not limited to, all hours they were subject to the control of
21 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
22 Order 5.

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

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1 31. As a direct and proximate result of Defendants' unlawful conduct as alleged
2 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
3 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
4 entitled to recover economic and statutory damages and penalties and other appropriate relief as
5 a result of Defendants' violations of the California Labor Code and Wage Order 5.

6 32. The foregoing practices and policies are unlawful and create an entitlement to
7 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
8 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
9 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
10 1194, 1197, and 1198, Wage Order 5, and Code of Civil Procedure § 1021.5.

11 **THIRD CAUSE OF ACTION**

12 **MEAL PERIOD VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

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

15 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 failed in their affirmative obligation to provide all of their non-exempt employees in California,
17 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
18 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11, for the
19 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
20 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
21 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
22 California Labor Code §§ 226.7 and 512.

23 35. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
25 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 5, and Code of Civil Procedure §
26 1021.5.

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1 **FOURTH 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 5, § 12 and Labor Code §§ 226.7 and 516 establish the right of
6 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
7 period worked, or major fraction thereof.

8 38. As alleged herein, and due to Defendants' unlawful rest period policies and/or
9 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
10 Class to take all paid rest periods to which they were legally entitled. Despite Defendants'
11 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
12 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
13 California Labor Code § 226.7.

14 39. The foregoing violations create an entitlement to recovery by Plaintiff and
15 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
16 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
17 to Labor Code §§ 226.7, 516, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 41. At all relevant times herein, Defendants were subject to Labor Code section 2802,
23 which states that "an employer shall indemnify his or her employees for all necessary
24 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
25 her duties, or of his or her obedience to the directions of the employer."

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

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

43. As alleged herein, due to Defendants’ unlawful reimbursement practices, Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all necessary business expenses incurred, including, among other things, personal cell phone usage and mandatory purchase of company apparel.

44. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code sections 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code section 2802.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

46. 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 complete and accurate wage statements that included, among other requirements, all hours worked, all overtime and minimum wages earned, total gross wages earned, all rates of pay, total net wages earned, and the name and address of the legal entity that is the employer, in violation of Labor Code § 226 *et seq.*

47. 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 overtime and minimum wages owed, and meal and rest period premium wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants’ reported data.

48. Defendants’ failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code

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

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 54. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
8 wages owed; failing to pay all required meal and rest period premium wages owed; failing to
9 reimburse for all necessary business expenses incurred; knowingly failing to furnish complete
10 and accurate, itemized wage statements; and failing to pay all final wages at the time of separation
11 from employment.

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

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

21 57. The acts complained of herein occurred within the last four years immediately
22 preceding the filing this action.

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

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

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

60. 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 pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these

employees' respective regular rates of compensation for meal period violations in violation Labor Code §§ 226.7, 512, 558, and 1198;

- d. 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, 512, 558, and 1198;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses they incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204 by; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

61. On or around February 2, 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 60 (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.

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62. 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 February 2, 2020 and the present.

63. 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. 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 owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
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;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code sections 2802 and 2804;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et. seq.*;

1 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
2 to Labor Code §§ 201-203;

3 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
4 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
5 practices declared by this Court to be in violation of California Business and Professions Code §
6 17200 *et seq.*;

7 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
8 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
9 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
10 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
11 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
12 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
13 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
14 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
15 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
16 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
17 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
18 period for those violations of the Labor Code for which no civil penalty is specifically provided.

19 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
20 Code § 218.6 and Civil Code §§ 3287 and 3289;

21 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 §§ 218.5, 1194 *et seq.*, 226, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

23 15. For such other and further relief the Court may deem just and proper.
24

25 Dated: April 9, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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Dated: April 9, 2021

By:

FILED 2.A