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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUN 18 2021

BY  **ASHLEE BAYLESS, DEPUTY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

EPIGMENIO RIVAS HERRERA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

O. W. LEE CO. INC., a California corporation;
and DOES 1 through 100,

Defendants.

CASE NO. CIVSB 2109747

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

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Epigmenio Rivas Herrera (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants O. W. Lee Co. Inc., a California corporation, and DOES 1 to
4 100, inclusive (collectively “Defendants”), 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 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2,
9 1197, 1198, 2698 *et. seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”),
10 in addition to seeking injunctive relief, declaratory relief, and restitution. This Complaint is
11 brought pursuant to Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
12 violations of the Labor Code because the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is and was at all times relevant herein, an individual over the age of
22 eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident.
23 During the four years immediately preceding the filing of this action and within the statute of
24 limitations periods applicable to each cause of action pled herein, Plaintiff was and is currently
25 employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’
26 policies and/or practices complained of herein, lost money and/or property, and has been deprived
27 of the rights guaranteed by Business & Professions Code § 17200, *et. seq.*, Labor Code §§ 204,
28 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et. seq.*, and Wage Order 1.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this action and continuing to the present, Defendants did (and
3 continue to do) business in California by designing and manufacturing outdoor furniture and
4 employed Plaintiff and other similarly-situated non-exempt employees within San Bernardino
5 County and the State of California.

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

15 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes.

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10. Upon information and belief, during the beginning of Plaintiff's employment with Defendants, Defendants' timekeeping policies/practices were unlawful because Defendants failed to record Plaintiff's and other non-exempt employees' meal periods in their time records, in violation of Wage Order 1, Section 7(A)(3). Instead, Defendants automatically deducted 30 minutes from non-exempt employee time records for purported meal periods, even if the employee did not actually take a meal period or did not take a full 30 minutes for their meal period. Defendants have utilized a bell schedule for meal periods, in which Defendants' practice is to ring a bell signaling the start of Plaintiff and other non-exempt employees' meal period and to ring a second bell exactly 30 minutes later signaling the end of their meal period. Plaintiff and other non-exempt employees were required to be back at their workstations before the second bell rang. As a result of these policies/practices, Plaintiff and other non-exempt employees were forced to take "short" meal periods because they were required to use part of the 30-minute meal period to return to their work stations before the second bell rang. Plaintiff and non-exempt employees have also experienced "late" meal periods, as they were not provided with an opportunity to take their meal period before the fifth hour of work due to work demands, including, but not limited to, providing client tours of the facility. As a result of Defendants' policy/practice of automatically deducting for meal periods, Plaintiff and other non-exempt employees were often not provided with legally compliant meal periods, nor were they paid for all hours worked, including minimum wages and overtime wages.

11. Upon information and belief, at some point in approximately 2019, Defendants began requiring employees to clock out and back in for their meal periods. Plaintiff's timekeeping records evidence that even after Defendants began requiring its non-exempt employees to clock out for meal periods, Plaintiff was often provided with meal periods that did not commence until after the conclusion of the fifth hour of work, and/or which were less than 30 minutes in duration.

1 12. Additionally, Plaintiff and other non-exempt employees have not been provided
2 with a second 30-minute meal period when they work shifts of over 10.0 hours.

3 13. Defendants have also failed to compensate Plaintiff and non-exempt employees
4 with the required meal period premium for each workday in which they experienced a meal period
5 violation as mandated by Labor Code § 226.7. Upon information and belief, for at least a portion
6 of the relevant time period, Defendants have maintained no mechanism for the payment of meal
7 period premium payments as required by Labor Code § 226.7, in the event that legally-compliant
8 meal periods are not provided.

9 14. Plaintiff and other non-exempt employees have also not been authorized and
10 permitted to take all required rest periods due to Defendants' unlawful rest period
11 policies/practices, which fail to authorize and permit a net 10-minute duty-free rest period for
12 every four hours worked, or major fraction thereof. Specifically, Plaintiff and other non-exempt
13 employees were only authorized and permitted up to 2 rest periods per shift, and were not
14 authorized and permitted a third rest period on shifts over 10.0 hours. On those occasions when
15 Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he
16 was entitled, Defendants have failed to compensate Plaintiff with the required rest period
17 premium(s) for each workday there was a rest period violation as mandated by Labor Code §
18 226.7. Upon information and belief, for at least a portion of the relevant time period, Defendants
19 have maintained no mechanism for the payment of rest period premium payments as required by
20 Labor Code § 226.7, in the event that legally-compliant rest period are not authorized and
21 permitted.

22 15. As a result of Defendants' failure to compensate Plaintiff and other non-exempt
23 employees for all minimum wages, overtime wages, and meal and rest period premium wages
24 earned, Defendants maintained inaccurate payroll records and issued inaccurate wage statements.

25 16. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations
26 of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020.
27 Accordingly, the relevant time period for each cause of action pled herein has been calculated
28 based on an additional 178 days of tolling under Emergency Rule 9.

1 **CLASS ACTION ALLEGATIONS**

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

4 a. The Overtime Class consists of all of Defendants' current and former non-exempt
5 employees in California who worked more than 8.0 hours in a workday and/or
6 40.0 hours in a workweek and had a meal period auto-deducted from their time
7 records for a purported meal period, during the four years plus 178 days
8 immediately preceding the filing of this action through the present.

9 b. The Minimum Wage Class consists of all of Defendants' current and former non-
10 exempt employees in California and had a meal period auto-deducted from their
11 time records for a purported meal period, during the four years plus 178 days
12 immediately preceding the filing of this action through the present;

13 c. The Meal Period Class consists of all of Defendants' current and former non-
14 exempt employees in California who worked at least one shift in excess of 5.0
15 hours, during the four years plus 178 days immediately preceding the filing of this
16 action through the present.

17 d. The Rest Period Class consists of all of Defendants' current and former non-
18 exempt employees in California who worked at least one shift of more than 10.0
19 hours, during the four years plus 178 days immediately preceding the filing of this
20 action through the present.

21 e. The Wage Statement Class consists of all members of the Minimum Wage Class,
22 Overtime Class, Meal Period Class, and/or Rest Period Class who have received a
23 wage statement from Defendants during the one year plus 178 days immediately
24 preceding the filing of this action through the present;

25 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
26 joinder of all members would be impracticable. The membership of the Classes are unknown to
27 Plaintiff at this time; however, it is estimated that the Class members number greater than 100
28 individuals. The identity of such membership is readily ascertainable via Defendants' records.

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

- 5 i. Whether Defendants violated the applicable Labor Code provisions, including, but
6 not limited to §§ 510 and 1194, by requiring overtime and not paying the
7 appropriate rates of pay for said work according to California law;
- 8 ii. Whether Defendants violated the applicable Labor Code provisions including, but
9 not limited to §§ 1182.12, 1194, 1194.2 and 1197 by failing to pay all members of
10 the Minimum Wage Class at least the minimum wage for all hours worked;
- 11 iii. Whether Defendants provided all legally compliant meal periods to members of
12 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 13 iv. Whether Defendants authorized and permitted all legally compliant rest periods to
14 members of the Rest Period Class pursuant to Labor Code § 226.7; and
- 15 v. Whether Defendants provided meal and rest period premium payments for non-
16 compliant meal and rest periods.
- 17 vi. Whether Defendants furnished legally compliant wage statements to members of
18 the Wage Statement Class pursuant to Labor Code section 226.

19 **20. 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' policies
22 and/or practices applicable to each individual class member, including, but not limited to,
23 Defendants' uniform policies and/or practices regarding calculating and paying overtime and/or
24 double-time compensation, and providing meal periods and rest periods. As such, the common
25 questions predominate over individual questions concerning each individual class member's
26 showing as to their eligibility for recovery or as to the amount of their damages.

27 **21. Typicality:** Plaintiff's claims are typical of the Classes' claims because Plaintiff
28 was employed by Defendants as a non-exempt employee in California during the statute(s) of

1 limitations period applicable to each cause of action pled herein. As alleged herein, Plaintiff, like
2 the Class members, was deprived of all earned minimum and overtime wages, was not provided
3 all required meal and rest periods, and did not receive meal and rest period premium wages for
4 missed or non-compliant meal and rest periods.

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

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

1 other class members not parties to adjudications or which would substantially impair or impede
2 the ability of the class members to protect their interests. Further, the claims of the individual
3 members of the Class are not sufficiently large to warrant vigorous individual prosecution
4 considering all of the concomitant costs and expenses attending thereto. As such, the Classes
5 identified in Paragraph 17 are maintainable as a Class under Cal. Code Civ. Proc. § 382.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

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

10 25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
11 1198, which provide that non-exempt employees are entitled to all overtime wages and
12 compensation for all overtime hours worked and provide a private right of action for the failure
13 to pay all overtime compensation for overtime work performed.

14 26. At all times relevant herein, Defendants were required to properly compensate
15 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
16 hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3
17 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
18 rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in a
19 workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the
20 employee’s regular rate of work in excess of 12 hours each workday and/or in excess of 8 hours
21 on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and
22 members of the Overtime Class to work overtime and/or double-time hours, but did not
23 compensate Plaintiff or members of the Overtime Pay Class at one and one-half times (or two
24 times, in the case of double-time) their regular rates of pay for such hours. The foregoing policies
25 and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class
26 Members in a civil action for the unpaid amount of overtime premiums owing, including interest
27 thereon, statutory penalties, attorneys’ fees, and costs of suit according to California Labor Code
28 §§ 204, 210, 216, 218.6, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

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

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

28. Wage Order 1, § 4 and Labor Code §§ 1197 and 1182.12 establish employees' right 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 thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and Minimum Wage Class members for all hours worked, including, but not limited to, all hours they were subject to Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage Order 1.

29. 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 requiring Plaintiff and members of the Minimum Wage Class to perform off-the-clock work. Accordingly, Plaintiff and Minimum Wage Class members were not paid at least the legal minimum wage for all hours actually worked.

30. 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.

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

32. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq.*, and 1198; and Code of Civil Procedure § 1021.5.

33. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to the Wage Order 1, § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; and attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7 and 512.

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

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1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 38. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516 establish the
6 right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
7 hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit
8 Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as alleged
9 herein, Defendants did not pay these individuals an additional hour of pay at their respective
10 regular rate for the rest periods that they failed to authorize and permit them to take, as required
11 by Labor Code § 226.7 and Wage Order 1, § 12.

12 39. Defendants' policies and practices described herein are unlawful and create an
13 entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the
14 unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
15 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
16 Wage Order 1, including interest thereon, statutory penalties, civil penalties, and costs of suit
17 according to California Labor Code §§ 226.7, 516, 558, and 1198 and Wage Order 1, and Civil
18 Code §§ 3287(b) and 3289.

19 **FIFTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

23 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
25 and Wage Statement Class members with complete and accurate wage statements that included,
26 among other requirements, all hours worked, total gross wages earned, all rates of pay and
27 corresponding number of hours worked (including for overtime pay), total net wages earned, and
28 the correct name of the legal entity that is the employer in violation of Labor Code § 226 et seq.

42. 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 deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

45. 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: (a) failing to pay Plaintiff and members of the Overtime Class all overtime and/or double-time wages; (b) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, and failing to pay them meal period premium payments; and (d) failing to authorize and permit Plaintiff and Rest Period Class members to take all rest periods to which they are entitled, and failing to pay them rest period premium payments.

46. 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.

47. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself 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 California Business and Professions Code §§ 17203 and 17208.

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

49. Plaintiff was compelled to retain the services of counsel to file this court action to protect his 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 ATTORNEY GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

51. 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 \$200.00 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

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

- 2 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
3 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 4 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
5 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
6 and 1197;
- 7 c. Failing to provide Plaintiff and other aggrieved employees all legally required
8 meal periods and failing to pay meal period premiums at the employees'
9 respective regular rates of compensation in violation of Labor Code §§ 226.7,
10 512, and 558;
- 11 d. Failing to authorize and permit Plaintiff and other aggrieved employees their
12 statutorily mandated rest periods and failing to pay rest period premiums in
13 violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 14 e. Failing to furnish Plaintiff and other aggrieved employees with complete,
15 accurate, itemized wage statements in violation of Labor Code § 226;
- 16 f. Failing to pay Plaintiff and similarly aggrieved employees all final wages owed
17 at the termination of their employment in violation of Labor Code §§ 201-203;
- 18 g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
19 twice each calendar month in violation of Labor Code § 204; and
- 20 h. Failing to maintain accurate records on behalf of Plaintiff and aggrieved
21 employees in violation of Labor Code § 1174, and 1198.

22 52. On or about April 12, 2021 Plaintiff notified Defendants via certified mail and
23 notified the California Labor and Workforce Development Agency ("LWDA") via its website, of
24 Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for
25 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
26 California Labor Code identified in Paragraph 51 (a)-(h). Now that sixty-five days have passed
27 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
28 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.

53. Based on the foregoing, Plaintiff seeks to represent himself, the State of California, 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 at any time from one year and 178 days prior to the submission of Plaintiff's PAGA notice to the present.

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interest 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, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 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 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §226 *et seq.*;
9. 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 violate Business & Professions Code § 17200, *et seq.*;

10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 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 violations of Labor Code sections identified in Paragraph 51 (a)-(h) above.

11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289;

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

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

Respectfully submitted,

Dated: June 18, 2021

HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

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Dated: June 18, 2021

HAINES LAW GROUP, APC



Paul K. Haines
Attorneys for Plaintiff