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 Superior Court of California
 County of Los Angeles
 12/12/2022

Sherri R. Carter, Executive Officer / Clerk of Court
 By: C. Vargas Deputy

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

OSMAN VENTURA, as an individual and on
 behalf of all others similarly situated,

Plaintiff,

vs.

KAY & JAMES, INC., a California
 corporation, dba J & S MACHINE WORKS.;
 and DOES 1 through 100,

Defendants.

CASE NO. 19STCV25743

**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, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516);**
- (5) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (7) **FAILURE TO PAY ALL WAGES AT
 THE AGREED-UPON RATE
 (LABOR CODE §§ 221-223);**
- (8) **UNFAIR COMPETITION (BUS &
 PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS
 GENERAL ACT (LABOR CODE §
 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Osman Ventura (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Kay & James, Inc., a California corporation, dba J & S
4 Machine Works; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information
5 and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 221-223, 226 *et seq.*, 226.7, 510, 512, 516,
10 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et. seq.*, and Industrial Welfare Commission Wage
11 Order 1 (“Wage Order 1”), in addition to seeking injunctive relief, declaratory relief and
12 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. The
13 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of
14 the Superior Court and will be established according to proof at trial.

15 **VENUE**

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

22 **PARTIES**

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

§§ 201-203, 204, 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et. seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), 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 the Complaint and continuing to the present, Defendants did (and continue to do) business manufacturing cooking equipment and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County and the State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to 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 in Paragraph 15) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff was employed by Defendants as a non-exempt employee from
6 approximately June 2007 until approximately April 11, 2018. Plaintiff previously filed an
7 individual complaint for several of the wage and hour claims at issue in this Complaint, on or
8 about September 6, 2018, thereby putting Defendants on notice of these issues and claims.
9 However, upon learning of the classwide nature of these issues, Plaintiff has elected to pursue
10 these claims on a class action basis through this action.

11 10. During Plaintiff's employment with Defendants, Defendants utilized a
12 timekeeping system which failed to compensate Plaintiff and other non-exempt employees for all
13 hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Defendants
14 only paid its non-exempt employees in thirty minute increments, and maintained an express
15 written policy that says "J&S pays in 30-minute increments...we do not tolerate tardiness." This
16 same policy states that do not punch in before 6:45 in the morning unless authorized," and further,
17 "anytime you are on the clock, you should be working." Another written policy of Defendants
18 expressly states: "I understand that the attendance system will not recognize any time worked
19 after my scheduled shift without a manual override, which can only be administered after written
20 and signed approval." As a result of these policies and practices, Defendants did not pay Plaintiff
21 and other non-exempt employees for all hours that they were on the clock working. For example,
22 on August 24, 2017, Plaintiff clocked in for work at 7:47 a.m. and clocked out at 5:30 p.m. with
23 no other timekeeping punches, because Defendants automatically deduct 30 minutes for a
24 purported meal period for each shift worked, irrespective of whether or not a full 30 minute meal
25 period is provided (as discussed below). Even assuming that Plaintiff received a full 30 minute
26 meal period on August 24, 2017, he would have been on the clock for 9 hours and 13 minutes.
27 However, Plaintiff was only paid for 9.0 hours on this date. Similarly, on September 8, 2017,
28 Plaintiff clocked in at 7:43 a.m. and out at 5:31 p.m. Even assuming that Plaintiff received a full

30 minute meal period on this date, he would have been on the clock for 9 hours and 18 minutes. However, Plaintiff was only paid for 9.0 hours on this date. The foregoing timekeeping policies and/or practices regularly, systematically, and impermissibly rounded and/or shaved the hours worked by Plaintiff and other non-exempt employees in Defendants' favor resulting, over a period of time, in the failure to compensate Plaintiff and other non-exempt employees for all hours worked. Furthermore, Defendants automatic deduction of 30 minutes of time for a purported meal period also contributed to additional unpaid wages, as Plaintiff and other non-exempt employees did not always receive a full 30 minutes for a meal period. As a result, Plaintiff and other non-exempt employees were not compensated for all required minimum, regular and overtime wages.

11. Plaintiff was not provided with all legally compliant meal periods due to Defendants' meal period policies/practices which routinely failed to provide Plaintiff and other non-exempt employees with a duty-free, uninterrupted 30-minute meal period commencing before the end of the fifth hour of work. Specifically, Defendants' routinely provided Plaintiff and other non-exempt employees with their meal period commencing after the completion of the fifth hour of work. In addition, Plaintiff and other non-exempt employees did not clock out for a meal period, and were often provided with a meal period that was less than 30 minutes in duration, but Defendants would nevertheless deduct a full 30 minutes from their timekeeping records. In the event that a legally compliant meal period was not in fact provided, Plaintiff was not paid the meal period premium required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants did not maintain a payroll code or other mechanism for the payment of meal period premiums under Labor Code § 226.7 in the event that they failed to provide a legally compliant meal period to their non-exempt employees.

12. Plaintiff and other non-exempt employees were not authorized and permitted to take all legally compliant rest periods. Defendants written policy was to only provide two rest periods per day, irrespective of shift length, despite the fact that Plaintiff and other non-exempt employees occasionally would work shifts in excess of 10.0 hours. Upon information and belief, during at least a portion of the putative class period, Defendants did not maintain any payroll code

1 or other mechanism for the payment of rest period premium payments as required by Labor Code
2 § 226.7.

3 13. As a result of Defendants' failure to pay all minimum, regular and overtime wages,
4 as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records
5 and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

6 14. As a further result of Defendants' failure to pay all minimum, regular and overtime
7 wages and meal and rest period premiums, Defendants failed to timely pay Plaintiff and other
8 non-exempt employees all wages owed at the time of their respective separations from
9 employment.

10 **CLASS ACTION ALLEGATIONS**

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

- 13 a. The Overtime Class consists of all of Defendants' current and former non-exempt
14 employees in California who worked more than eight hours per day and/or forty
15 hours per week and: (i) were subject to Defendants' timekeeping policies and/or
16 practices; and/or (ii) had automatic deductions taken for purported meal periods,
17 during the time period September 6, 2014 through the present.
- 18 b. The Minimum Wage Class consists of all of Defendants' current and former non-
19 exempt employees in California who (i) were subject to Defendants' timekeeping
20 policies and/or practices; and/or (ii) had automatic deductions taken for purported
21 meal periods, during the time period September 6, 2014 through the present.
- 22 c. The Agreed-Upon Rate Class consists of all Defendants' current and former non-
23 exempt employees in California who had automatic deductions taken for purported
24 meal periods, during the time period September 6, 2014 through the present.
- 25 d. The Meal Period Class consists of all of Defendants' current and former non-
26 exempt employees in California who worked at least one shift in excess of 5.0
27 hours and had 30 minutes automatically deducted from their timekeeping records,
28 during the time period September 6, 2014 through the present.

e. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked a shift in excess of 3.5 hours, during the time period September 6, 2014 through the present.

f. The Wage Statement Class consists of: (i) all members of the Overtime Class, Minimum Wage Class, Agreed-Upon Rate Class, Meal Period Class and/or Rest Period Class who received a wage statement; and/or (ii) all of Defendants' current and former non-exempt employees in California who received a wage statement that did not contain the name of the legal entity of the employer, during the time period September 6, 2017 through the present.

g. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the Overtime Class, Minimum Wage Class, Agreed-Upon Rate Class, Meal Period Class, and/or Rest Period Class in California, during the time period during the time period September 6, 2015 through the present.

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

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 the applicable Labor Code provisions, including, but not limited to §§ 510 and 1194, by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

ii. Whether Plaintiff and members of the Minimum Wage Class were compensated for all hours actually worked;

iii. Whether Defendants provided all legally compliant meal periods to members of

the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;

v. Whether Defendants provided meal or rest period premium payments for non-compliant meal and/or rest periods;

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

vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation were lawful.

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, including but not limited to Defendants' uniform timekeeping and meal and rest period policies and/or practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid overtime and minimum wages for all hours worked, 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 for missed or non-compliant meal and rest periods, was not provided with accurate, itemized wage statements with the name of the legal entity that is the employer, and/or was deprived of all final wages upon his separation of employment from Defendants.

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,

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
2 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
3 hour class actions in state and federal courts in the past and are committed to vigorously
4 prosecuting this action on behalf of the members of the Classes.

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

Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

24. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including 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 a workweek. Defendants caused Plaintiff to work overtime hours, but did not credit Plaintiff or members of the Overtime Pay Class with all overtime hours actually worked, and did not compensate Plaintiff or members of the Overtime Pay Class at one and one-half times their regular rates of pay for such hours.

25. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class Members in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

27. Wage Order No. 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish

1 the right of employees to be paid minimum wages for all hours worked, in amounts set by state
2 law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the
3 legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together
4 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the
5 unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to
6 conform their pay practices to the requirements of the law by failing to pay Plaintiff and the
7 Minimum Wage Class for all hours actually worked including, but not limited to, all hours they
8 were subject to the control of Defendants and/or suffered or permitted to work under the
9 California Labor Code and Wage Order 1.

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

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

20 30. Defendants' practice and uniform administration of corporate policy regarding
21 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
22 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
23 liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of
24 suit according to California Labor Code §§ 204, 1194 *et seq.*, 1197, 1198, and Code of Civil
25 Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

32. 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 pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

33. 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.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

36. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

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

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FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

39. 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 with respect to their actual regular hours worked, total gross wages earned, all rates of pay, and total net wages earned, in violation of Labor Code § 226 *et seq.*

40. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all their overtime and minimum wages, meal period premiums, rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data, as well as the failure to identify the correct name of the legal entity that is the employer.

41. 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
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

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

43. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or 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.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due to them at their termination, including, among other things, minimum and overtime wages and meal and rest period premium wages.

45. 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 Plaintiff and members of the Waiting Time Penalty 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.

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

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL AGREED-UPON WAGES

(AGAINST ALL DEFENDANTS)

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

48. This cause of action is brought pursuant to Labor Code §§ 204 and 221-223 which provide that all non-exempt employees are entitled to be paid all wages owed at the rate agreed upon with their employer, and provide a private right of action for the failure to pay all wages owed at the agreed-upon rate for all work performed.

49. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Agreed-Upon Rate Class for all hours worked at the rate agreed to with Defendants, pursuant to California Labor Code §§ 221-223. At all relevant times herein, Defendants required Plaintiff and the members of the Agreed-Upon Rate Class to remain under Defendants' control and perform work without paying them therefor, which resulted in Plaintiff

1 and the members of the Agreed-Upon Rate Class to earn less than the agreed rate for their work.
2 This pattern and practice by Defendants of failing to pay the agreed-upon rate for all work
3 performed violates the Labor Code and constitutes unjust enrichment.

4 50. The foregoing practices and policies are unlawful and create entitlement to
5 recovery by Plaintiff and the members of the Agreed-Upon Rate Class in a civil action for the
6 unpaid amount of agreed-upon wages owing, including interest thereon, as well as statutory
7 penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204,
8 218.5, 218.6, 221, and 558 California Code of Civil Procedure § 1021.5 California Code of Civil
9 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

10 **EIGHTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

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

14 52. Defendants have engaged and continue to engage in unfair and/or unlawful
15 business practices in California in violation of California Business and Professions Code § 17200
16 *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages; (b)
17 failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (c) failing
18 to provide Plaintiff and members of the Meal Period Class with all meal periods to which they
19 are entitled, or failing to pay them meal period premium payments in lieu thereof; (d) failing to
20 authorize and permit all required duty-free rest periods to Plaintiff and members of the Rest Period
21 Class, and/or failing to pay them rest period premiums payments in lieu thereof; (e) knowingly
22 failing to furnish Plaintiff and members of the Wage Statement Class with accurate and complete
23 wage statements in violation of Labor Code § 226; and (f) failing to pay all earned wages to
24 members of the Waiting Time Penalty Class at the time of their separation of employment.

25 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
26 Plaintiff and continues to deprive members of the Classes of compensation to which they are
27 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
28 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.

54. 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 Business and Professions Code §§ 17203 and 17208.

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

56. 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.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

58. 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 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 and/or double time 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 of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees of all legally required meal periods and failing to pay meal period premiums at the employees' respective regular rates of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to pay Plaintiff and similarly aggrieved employees all final wages owed at the termination of their employment in violation of Labor Code §§ 201-203
- g. Requiring that Plaintiff and other aggrieved employees remain under Defendant's control and perform work without being paid, thereby resulting in earnings being less than the agreed rate for their work in violation of Labor Code §§ 204 and 221-223;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice each calendar month in violation of Labor Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code § 1174, 1198, and 1199.

59. On or about July 23, 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 58 (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.

60. 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 between the one year and 178 days prior to the submission of Plaintiff’s PAGA notice to the present.

61. 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;

1 4. Upon the First Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;

3 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
4 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2
5 1197, and 1198;

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

8 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

10 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226;

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

14 10. Upon the Seventh Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 204, and 221-223;

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

20 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
21 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
22 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
23 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
24 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
25 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
26 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
27 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
28 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 58 (a)-(i) above.

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

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

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

Dated: December 7, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: December 7, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Osman Ventura v. Kay & James, Inc.

Los Angeles County Superior Court Case No. 19STCV25743

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

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

On December 12, 2022, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Ian G. Robertson, Esq.
Email: irobertson@littler.com
LITTLER MENDELSON, P.C.
18565 Jamboree Road, Suite 800
Irvine, CA 92612
Attorneys for Defendant KAY & JAMES, INC. dba J&S MACHINE WORKS

☒ (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 12, 2022, at El Segundo, California.



Aaron Clark