

FILED  
AUG 30 2021

K. BIEKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA

By T. Schrader, Deputy Clerk

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PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT 39, FOR ALL  
PURPOSES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA      SUMMONS ISSUED**  
**FOR THE COUNTY OF CONTRA COSTA**

**C21 - 01812**

RICHARD EVANS, individually, and on behalf  
of other members of the public similarly situated,  
and on behalf of other aggrieved employees  
pursuant to the California Private Attorneys  
General Act;

Plaintiff,

vs.

MY PAINT STOP LLC dba CREATIVE PAINT,  
a California limited liability company; and DOES  
1 through 25, inclusive.

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR  
DAMAGES AND ENFORCEMENT  
ACTION UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698 ET  
SEQ.**

1. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510 and 1198);
2. Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197, and 1197.1);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a));
4. Failure to Provide Rest Periods (Cal. Lab. Code § 226.7);
5. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226(a));
6. Failure to Timely Pay Wages Upon Termination (Cal. Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Cal. Bus. & Prof. Code §§ 17200, et seq.); and
8. Violation of the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698 et seq.)

**DEMAND FOR JURY TRIAL**

BY FAX  
FIRST LEGAL  
200 WEBSTER ST STE 201  
OAKLAND, CA 94607  
415-626-3111

COMES NOW, Plaintiff RICHARD EVANS (“Plaintiff”), individually and on behalf of other members of the general public similarly situated, and alleges as follows:

### **JURISDICTION AND VENUE**

1. This class action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for Plaintiff, including claims for compensatory damages, penalties, interest, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, regularly conduct business in California, and/or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because a majority of the acts, events, and violations occurred in this County. Upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Contra Costa.

### **THE PARTIES**

5. Plaintiff is an individual who resides in Alameda County, California.

6. At all times herein mentioned, Defendant MY PAINT STOP LLC dba CREATIVE PAINT, was and is, upon information and belief, a California limited liability company and an employer whose employees are engaged in the State of California, including the County of Contra Costa.

7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

1           8.       Plaintiff is informed and believes, and based thereon alleges, that each and all of the  
2 acts and omissions alleged herein were performed by, or are attributable to MY PAINT STOP LLC  
3 dba CREATIVE PAINT and/or DOES 1 through 25 (collectively “Defendants”), each acting as the  
4 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-  
5 Defendants and within the course and scope of such agency, employment, joint venture, or concerted  
6 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants represent  
7 and were in accordance with Defendants’ official policy.

8           9.       At all relevant times, Defendants were the employer of Plaintiff within the meaning of  
9 all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the  
10 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make  
11 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

12           10.      Defendants had the authority to hire and terminate Plaintiff and the other class  
13 members, to set work rules and conditions governing Plaintiff and the other class members’  
14 employment, and to supervise their daily employment activities.

15           11.      Defendants exercised sufficient authority over the terms and conditions of Plaintiff and  
16 the other class members’ employment for them to be joint employers of Plaintiff and the other class  
17 members.

18           12.      Defendants directly hired and paid wages and benefits to Plaintiff and the other class  
19 members.

20           13.      Defendants continue to employ hourly paid and/or non-exempt employees within the  
21 State of California.

22           14.      At all relevant times, Defendants, and each of them, ratified each and every act or  
23 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted  
24 the acts and omissions of each and all the other Defendants in proximately causing the damages herein  
25 alleged.

26           15.      Plaintiff is informed and believes, and based thereon alleges, that each of said  
27 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
28 omissions, occurrences, and transactions alleged herein.

**GENERAL ALLEGATIONS**

16. From approximately October 2015 to approximately April 2021, Defendants, jointly and severally, employed Plaintiff in the County of Contra Costa. Plaintiff's first position was as an exempt Sales Representative. In or around October 2016, Plaintiff became a non-exempt, hourly-paid Store Manager. Plaintiff worked at Defendants' store location in Danville, California.

17. Defendants hired Plaintiff and the other class members but failed to properly pay them all overtime wages and minimum wages due, failed to provide them with all meal periods and rest periods, failed to issue accurate itemized wage statements, failed to timely pay them all wages due during their employment, failed to timely pay them all wages due upon termination of their employment, failed to maintain accurate payroll records, and failed to provide and adhere to other related protections afforded by the California Labor Code and applicable Industrial Welfare Commission Wage Order.

18. Plaintiff and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that Plaintiff and the other class members were not receiving certain wages for overtime compensation.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive at least minimum wages for hours worked and that Plaintiff and the other class members were not receiving minimum wages for all hours worked.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one (1) additional hour of pay at their regular rate of compensation on occasions when they were not provided with an uninterrupted meal period of no less than thirty (30) minutes for a work period of more than five hours per day; that Plaintiff and the other class members did not receive all of the meal periods to which they were entitled; and that Plaintiff and the other class members did

not receive payment of one (1) additional hour of pay at their regular rate of compensation on each occasion when a meal period was missed, shortened, taken late, and/or interrupted.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one (1) additional hour of pay at their regular rate of compensation on occasions when they were not provided with an uninterrupted second meal period of no less than thirty (30) minutes for a work period of more than ten (10) hours per day; that Plaintiff and the other class members did not receive all of the second meal periods to which they were entitled; and that Plaintiff and the other class members did not receive payment of one (1) additional hour of pay at their regular rate of compensation on each occasion when a second meal period was missed, shortened, taken late, and/or interrupted.

23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all rest periods or payment of one (1) additional hour of pay at their regular rate of compensation on occasions when they were not provided with an uninterrupted rest period of no less than ten (10) minutes for every four hours, or major fraction thereof, worked; that Plaintiff and the other class members did not receive all rest periods to which they were entitled; and that Plaintiff and the other class members did not receive payment of one (1) additional hour of pay at their regular rate of compensation on each occasion when a rest period was missed, shortened, taken late, and/or interrupted.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive complete and accurate itemized wage statements in accordance with California law, but, in fact, they did not receive complete and accurate itemized wage statements from Defendants.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all wages owed to them during their employment. Plaintiff and the other class members did not receive payment of all wages, including overtime wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

1           26.     Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or  
2 should have known that Plaintiff and the other class members were entitled to receive all wages owed  
3 to them upon discharge or resignation, including overtime wages and meal and rest period premiums,  
4 and they did not, in fact, receive all such wages owed to them at the time of their discharge or  
5 resignation.

6           27.     Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or  
7 should have known that Defendants had to keep complete and accurate payroll records for Plaintiff  
8 and the other class members in accordance with California law, but, in fact, did not keep complete and  
9 accurate payroll records.

10          28.     California Labor Code section 218 states that nothing in Article 1 of the Labor Code  
11 shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or  
12 her] under this article.”

### 13                                   **CLASS ACTION ALLEGATIONS**

14          29.     Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly  
15 situated, as members of a proposed class pursuant to California Code of Civil Procedure section 382.  
16 The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority  
17 requirements under California Code of Civil Procedure section 382.

18          30.     The proposed class is defined as follows:

19                 All current and former non-exempt and/or hourly-paid employees who worked for  
20 Defendants in the State of California at any time during the period from four years prior  
21 to the filing of this complaint until final judgment and who are residents of the State of  
22 California.

23          31.     Plaintiff reserves the right to establish additional subclasses as appropriate.

24          32.     There is a well-defined community of interest in the litigation and the Class is easily  
25 ascertainable.

26          33.     The Class is so numerous that the individual joinder of all its members is impracticable.  
27 While the exact number and identities of class members are unknown to Plaintiff at this time, the exact  
28

1 numbers of class members and their identities can be ascertained through appropriate discovery from  
2 records maintained by Defendants and their agents.

3 34. Common questions of fact and law exist as to all class members, which predominate  
4 over any questions affecting only individual members of the Class. The common legal and factual  
5 questions which do not vary from class member to class member and which may be determined  
6 without reference to the individual circumstances of any class member include, but are not limited to,  
7 the following:

- 8 i. Whether Defendants had a policy and practice of failing to pay overtime wages to  
9 Plaintiff and the other class members for all overtime hours worked;
- 10 ii. Whether Defendants had a policy and practice of failing to pay minimum wages to  
11 Plaintiff and the other class members for all hours worked;
- 12 iii. Whether Defendants had a policy and practice of failing to provide meal periods to  
13 Plaintiff and the other class members;
- 14 iv. Whether Defendants had a policy and practice of failing to provide rest periods to  
15 Plaintiff and the other class members;
- 16 v. Whether Defendants failed to pay Plaintiff and the other class members for all hours  
17 worked, and for all missed, short, late, and/or interrupted meal periods and rest  
18 periods;
- 19 vi. Whether Defendants' failure to pay wages, without abatement or reduction, in  
20 accordance with the California Labor Code, was willful;
- 21 vii. Whether Defendants failed to provide accurate itemized wage statements to Plaintiff  
22 and the other class members;
- 23 viii. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class  
24 members during their employment;
- 25 ix. Whether Defendants failed to timely pay all wages due upon termination to Plaintiff  
26 and the other class members;
- 27 x. Whether Defendants failed to maintain complete and accurate payroll records;
- 28 xi. Whether Defendants' conduct was willful or reckless;

- xii. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- xiii. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- xiv. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

35. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are coincident with and not antagonistic to those of the other class members he seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intends to prosecute this action vigorously.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual litigation of the claims of all class members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each class member.

37. Certification of this lawsuit as a class action will advance public policy objectives. Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

#### **PAGA ALLEGATIONS**

38. At all times set forth herein, the California Labor Code Private Attorneys General Act

1 of 2004 (“PAGA”) was applicable to Plaintiff’s employment by Defendants.

2 39. At all times set forth herein, PAGA has provided that any provision of law under the  
3 California Labor Code that provides for a civil penalty, including unpaid wages and premium wages,  
4 to be assessed and collected by the California Labor & Workforce Development Agency (“LWDA”)  
5 for violations of the California Labor Code may, as an alternative, be recovered through a civil action  
6 brought by an aggrieved employee on behalf of himself and other current or former employees  
7 pursuant to procedures outlined in California Labor Code section 2699.3.

8 40. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who is  
9 any person that was employed by the alleged violator and against whom one or more of the alleged  
10 violations was committed.

11 41. Plaintiff was employed by Defendants and the alleged violations were committed  
12 against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and  
13 the other employees are “aggrieved employees” as defined by California Labor Code section 2699(c)  
14 in that they are current or former employees of Defendants and one or more of the alleged violations  
15 were committed against them.

16 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,  
17 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements  
18 have been met:

19 (a) The aggrieved employee shall give written notice by certified mail (hereinafter  
20 “Employee’s Notice”) to the LWDA and the employer of the specific provisions  
21 of the Labor Code alleged to have been violated, including the facts and theories  
22 to support the alleged violations.

23 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer  
24 and the aggrieved employee by certified mail that it does not intend to investigate  
25 the alleged violation within sixty (60) calendar days of the postmark date of the  
26 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is  
27 not provided within sixty five (65) calendar days of the postmark date of the  
28 Employee’s Notice, the aggrieved employee may commence a civil action

pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

43. On July 7, 2021, Plaintiff provided notice by electronic submission to the LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3.

44. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198 will have been satisfied upon expiration of the 65-day notice period.

### **FIRST CAUSE OF ACTION**

#### **Violation of California Labor Code §§ 510 and 1198**

##### **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

45. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

46. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Order provides that Defendants were required to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

48. The applicable IWC Wage Order further provides that Defendants were required to pay Plaintiff and the other class members at the rate of two times the regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

49. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and

1 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)  
2 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

3 50. During the relevant time period, Plaintiff and the other class members worked in excess  
4 of eight (8) hours in a day, and/or in excess of forty (40) hours in a week, performing work duties  
5 off-the-clock. By way of example, Plaintiff and the other class members were required to clock in no  
6 more than 5 minutes prior to the start of their scheduled shift and clock out no more than 5 minutes  
7 after the end of their scheduled shift. As a result, Plaintiff and the other class members were not paid  
8 for the time they spent performing work duties outside of their scheduled shift.

9 51. During the relevant time period, Defendants failed to correctly calculate the regular  
10 rate of pay for purposes of overtime compensation. Defendants failed to include non-discretionary  
11 incentives, bonuses, and commissions in Plaintiff and the other class members' regular rate of pay for  
12 purposes of overtime compensation.

13 52. During the relevant time period, Defendants intentionally and willfully failed to pay  
14 overtime wages owed to Plaintiff and the other class members.

15 53. Defendants' failure to pay Plaintiff overtime wages violates California Labor Code  
16 sections 510 and 1198, and is therefore unlawful.

17 54. Pursuant to California Labor Code section 1194, Plaintiff and the other class members  
18 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'  
19 fees.

## 20 **SECOND CAUSE OF ACTION**

### 21 **Violation of California Labor Code §§ 1194, 1197, and 1197.1**

#### 22 **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

23 55. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
24 allegations in all preceding paragraphs.

25 56. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 have  
26 provided the minimum wage to be paid to employees, and the payment of a lesser wage than the  
27 minimum so fixed is unlawful.

28 57. During the relevant time period, Defendants failed to pay the minimum wage to

1 Plaintiff and the other class members as required pursuant to California Labor Code sections 1194,  
2 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*, Defendants' failure  
3 to pay Plaintiff and the other class members any wages for time spent working "off-the-clock." By  
4 way of example, Plaintiff and the other class members were required to clock in no more than 5  
5 minutes prior to the start of their scheduled shift and clock out no more than 5 minutes after the end  
6 of their scheduled shift. As a result, Plaintiff and the other class members were not paid for the time  
7 they spent performing work duties outside of their scheduled shift.

8 58. Defendants' failure to pay Plaintiff and the other class members the minimum wage as  
9 required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections  
10 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage  
11 compensation as well as interest, costs, and attorneys' fees.

12 59. Pursuant to Labor code section 1194.2, Plaintiff and the other class members are  
13 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest  
14 thereon.

### 15 **THIRD CAUSE OF ACTION**

#### 16 **Violation of California Labor Code §§ 226.7 and 512(a)**

#### 17 **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

18 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
19 allegations in all preceding paragraphs.

20 61. At all relevant times set forth herein, the applicable IWC Wage Order and California  
21 Labor Code section 226.7 and 512(a) were applicable to Plaintiff and the other class members'  
22 employment by Defendants.

23 62. At all relevant times, California Labor Code section 226.7 has provided that no  
24 employer shall require an employee to work during any meal or rest period mandated by an applicable  
25 order of the California IWC.

26 63. At all relevant times, the applicable IWC Wage Order and California Labor Code  
27 section 512(a) have provided that an employer may not require, cause or permit an employee to work  
28 for a work period of more than five (5) hours per day without providing the employee with a meal

1 period of not less than thirty (30) minutes, except that if the total work period per day of the employee  
2 is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer  
3 and employee.

4 64. At all relevant times, the applicable IWC Wage Order and California Labor Code  
5 section 512(a) have further provided that an employer may not require, cause or permit an employee  
6 to work for a work period of more than ten (10) hours per day without providing the employee with a  
7 second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours  
8 worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent  
9 of the employer and the employee only if the first meal period was not waived.

10 65. At all relevant times, the applicable IWC Wage Order has provided that unless an  
11 employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered  
12 an “on duty” meal period and counted as time worked. The applicable IWC Wage Order has further  
13 provided that an “on duty” meal period shall be permitted only when the nature of the work prevents  
14 an employee from being relieved of all duty and when by written agreement between the parties an  
15 on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in  
16 writing, revoke the agreement at any time.

17 66. During the relevant time period, Plaintiff and the other class members, who were  
18 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their  
19 legally-mandated meal periods by mutual consent, were required to work for periods longer than  
20 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

21 67. During the relevant time period, Plaintiff and the other class members, who were  
22 scheduled to work for a period of time in excess of six (6) hours, were required to work for periods  
23 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

24 68. During the relevant time period, Plaintiff and the other class members, who were  
25 scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve (12) hours,  
26 and who did not waive their legally-mandated meal periods by mutual consent, were required to work  
27 in excess of ten (10) hours without receiving a second uninterrupted meal period of not less than thirty  
28 (30) minutes.

1           69.       During the relevant time period, Plaintiff and the other class members, who were  
2 scheduled to work for a period of time in excess of twelve (12) hours, were required to work for periods  
3 longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30)  
4 minutes.

5           70.       During the relevant time period, Plaintiff and the other class members' meal periods  
6 were missed, taken late, were short, and/or were interrupted.

7           71.       During the relevant time period, Defendants intentionally and willfully required  
8 Plaintiff and the other class members to work during meal periods.

9           72.       During the relevant time period, Defendants required Plaintiff and the other class  
10 members to take on duty meal periods. However, the nature of the work did not prevent Plaintiff and  
11 the other class members from being relieved of all duty and Defendants did not have a written on duty  
12 meal period agreement with Plaintiff and the other class members which was revocable at any time in  
13 writing.

14           73.       During the relevant time period, Defendants failed to pay Plaintiff and the other class  
15 members' the full meal period premium due pursuant to California Labor Code section 226.7.

16           74.       Defendants' conduct violates the applicable IWC Wage Order and California Labor  
17 Code sections 226.7 and 512(a).

18           75.       Pursuant to the applicable IWC Wage Order and California Labor Code section  
19 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional  
20 hour of pay at their regular rate of compensation for each work day that a meal period was not provided  
21 and a meal period premium was not paid.

#### 22                                   **FOURTH CAUSE OF ACTION**

#### 23                                   **Violation of California Labor Code § 226.7**

24                                   **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

25           76.       Plaintiff incorporates herein by specific reference, as though fully set forth, the  
26 allegations in all preceding paragraphs.

27           77.       At all relevant times set forth herein, the applicable IWC Wage Order and California  
28 Labor Code section 226.7 were applicable to Plaintiff and the other class members' employment by

1 Defendants.

2 78. At all relevant times set forth herein, California Labor Code section 226.7 has provided  
3 that no employer shall require an employee to work during any rest period mandated by an applicable  
4 order of the California IWC.

5 79. At all relevant times set forth herein, the applicable IWC Wage Order has provided that  
6 “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as  
7 practicable shall be in the middle of each work period” and that the “rest period time shall be based  
8 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major  
9 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

10 80. At all relevant times set forth herein, the applicable IWC Wage Order has provided that  
11 authorized rest period time shall be counted as hours worked for which there shall be no deduction  
12 from wages.

13 81. During the relevant time period, Defendants required Plaintiff and the other class  
14 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period  
15 per each four (4) hour period worked.

16 82. During the relevant time period, Plaintiff and the other class members’ rest periods  
17 were missed, taken late, were short, and/or were interrupted.

18 83. During the relevant time period, Defendants willfully required Plaintiff and the other  
19 class members to work during rest periods.

20 84. During the relevant time period, Defendants required Plaintiff and the other class  
21 members to clock out during rest periods.

22 85. During the relevant time period, Defendants failed to pay Plaintiff and the other class  
23 members’ the full rest period premium due pursuant to California Labor Code section 226.7.

24 86. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code  
25 section 226.7.

26 87. Pursuant to the applicable IWC Wage Orders and California Labor Code section  
27 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional  
28 hour of pay at their regular rate of compensation for each work day that a rest period was not provided

1 and a rest period premium was not paid.

2 **FIFTH CAUSE OF ACTION**

3 **Violation of California Labor Code § 226(a)**

4 **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

5 88. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
6 allegations in all preceding paragraphs.

7 89. At all relevant times set forth herein, California Labor Code section 226(a) has  
8 provided that every employer shall furnish each of its employees an accurate itemized statement in  
9 writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of  
10 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)  
11 all deductions, provided that all deductions made on written orders of the employee may be aggregated  
12 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the  
13 employee is paid, (7) the name of the employee and his or her social security number, (8) the name  
14 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during  
15 the pay period and the corresponding number of hours worked at each hourly rate by the employee.  
16 The deductions made from payments of wages shall be recorded in ink or other indelible form,  
17 properly dated, showing the month, day, and year, and a copy of the statement or a record of the  
18 deductions shall be kept on file by the employer for at least three years at the place of employment or  
19 at a central location within the State of California.

20 90. At all relevant times set forth herein, Defendants have intentionally and willfully failed  
21 to provide Plaintiff and the other class members with accurate itemized wage statements. The  
22 deficiencies include, but are not limited to, Defendants failure to list all of the total hours worked  
23 (including time spent working off-the-clock) at the correct hourly rates of pay, the correct amount of  
24 wages earned, the correct amount of meal period premium wages earned, and the correct amount of  
25 rest period premium wages earned.

26 91. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff  
27 and the other class members have suffered injury and damage to their statutorily-protected rights.

28 92. More specifically, Plaintiff and the other class members have been injured by

Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

93. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars.

### **SIXTH CAUSE OF ACTION**

#### **Violation of California Labor Code §§ 201, 202, and 203**

#### **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

94. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

95. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 mandates that if an employee quits, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

96. California Labor Code section 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than thirty (30) days.

97. At the time that Plaintiff and the other class members' employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and the other class members all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium

1 wages.

2 98. As a result, Plaintiff and the other class members are entitled to all available statutory  
3 penalties, including the waiting time penalties provided in California Labor Code section 203, together  
4 with interest thereon, as well as other available remedies.

5 **SEVENTH CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 17200, Et Seq.**

7 **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

8 99. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
9 allegations in all preceding paragraphs.

10 100. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful  
11 and harmful to Plaintiff, to the other class members, to the general public, and to Defendants'  
12 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest  
13 within the meaning of Code of Civil Procedure section 1021.5.

14 101. Defendants' activities as alleged herein are violations of California law, and constitute  
15 unlawful business acts and practices in violation of California Business & Professions Code section  
16 17200, et seq.

17 102. A violation of California Business & Professions Code section 17200, et seq. may be  
18 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and  
19 practices of requiring employees, including Plaintiff and the other class members, to work without  
20 paying them proper compensation violates California Labor Code sections 510, 1194, 1197, 1197.1  
21 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff  
22 and the other class members, to work through their meal and rest periods without paying them proper  
23 compensation violate California Labor Code sections 226.7 and 512(a). Defendants also violated  
24 California Labor Code sections 201, 202, 203, 204, 226, and 1174(d).

25 103. As a result of the herein described violations of California law, Defendants unlawfully  
26 gained an unfair advantage over other businesses.

27 104. Plaintiff and the other class members have been personally injured by Defendants'  
28 unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss

1 of money and/or property.

2 105. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff  
3 and the other class members are entitled to restitution of the wages withheld and retained by  
4 Defendants during a period that commences four years from the filing of this complaint; an award of  
5 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable  
6 laws; and an award of costs.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 2698 et seq.**

9 **(Against MY PAINT STOP LLC DBA CREATIVE PAINT and DOES 1-25)**

10 106. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
11 allegations in all preceding paragraphs.

12 107. PAGA expressly establishes that any provision of the California labor Code which  
13 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,  
14 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,  
15 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or  
16 herself, and other current or former employees.

17 108. Whenever the LWDA, or any of its departments, divisions, commissions, boards,  
18 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to  
19 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

20 109. Plaintiff and the other hourly-paid, non-exempt employees, including those  
21 misclassified as independent contractors, are "aggrieved employees" as defined by California Labor  
22 Code section 2699(c) in that they are all current or former employees of Defendants, and one or more  
23 of the alleged violations were committed against them.

24 110. Defendants' conduct, as alleged herein, violates numerous sections of the California  
25 Labor Code, including, but not limited to, the following:

26 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay  
27 overtime wages;

28 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to

1 pay minimum wages;

2 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide  
3 legally required meal periods;

4 (d) Violation of California Labor Code section 226.7 for failure to provide legally  
5 required rest periods;

6 (e) Violation of California Labor Code section 204 for failure to timely pay all wages  
7 due during employment;

8 (f) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all  
9 wages at time of discharge from employment;

10 (g) Violation of California Labor Code section 226(a) for failure to provide accurate  
11 wage statements to Plaintiff and other aggrieved employees; and

12 (h) Violation of California Labor Code section 1174(d) for failure to keep complete  
13 and accurate payroll records relating to Plaintiff and other aggrieved employees.

14 111. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,  
15 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of  
16 civil penalties for Plaintiff, all other aggrieved employees, and the State of California against  
17 Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein.  
18 Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees  
19 shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor  
20 laws and education of employers and employees about their rights and responsibilities and twenty-five  
21 (25%) to the aggrieved employees. Further, and as authorized by the California Labor Code sections  
22 210, 218.5, and 2699, Plaintiff seeks recovery of his attorneys' fees and costs.

23 **PRAYER FOR RELIEF**

24 Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

25 **Class Certification**

- 26 1. That this action be certified as a class action;  
27 2. That Plaintiff be appointed as the class representative;  
28 3. That counsel for Plaintiff be appointed as class counsel; and

1           4.       That Defendants provide to Class Counsel immediately the names and most current/last  
2 known contact information (address, e-mail and telephone numbers) of all class members.

3                                   **As to the First Cause of Action**

4           5.       That the Court declare, adjudge, and decree that Defendants violated California Labor  
5 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime  
6 wages due to Plaintiff and the other class members;

7           6.       For general unpaid wages at overtime wage rates and such general and special damages  
8 as may be appropriate;

9           7.       For pre-judgment interest on any unpaid overtime compensation commencing from the  
10 date such amounts were due;

11           8.       For reasonable attorneys' fees and costs of suit incurred herein pursuant to California  
12 Labor Code section 1194; and

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

14                                   **As to the Second Cause of Action**

15           10.      That the Court declare, adjudge, and decree that Defendants violated California Labor  
16 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the  
17 other class members;

18           11.      For general unpaid wages and such general and special damages as may be appropriate;

19           12.      For statutory wage penalties pursuant to California Labor Code section 1197.1 for  
20 Plaintiff and the other class members in the amount as may be established according to proof at trial;

21           13.      For pre-judgment interest on any unpaid compensation from the date such amounts  
22 were due;

23           14.      For reasonable attorneys' fees and costs of suit incurred herein pursuant to California  
24 Labor Code section 1194(a);

25           15.      For liquidated damages pursuant to California Labor Code section 1194.2; and

26           16.      For such other and further relief as the Court may deem just and proper.

27                                   **As to the Third Cause of Action**

28           17.      That the Court declare, adjudge, and decree that Defendants violated California Labor

Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at Plaintiff and the other class member's regular rate of compensation for each workday that a meal period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

22. For reasonable attorneys' fees and costs of suit incurred herein; and

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

#### **As to the Fourth Cause of Action**

24. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

25. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at Plaintiff and the other class members' regular rate of compensation for each workday that a rest period was not provided;

26. For all actual, consequential, and incidental losses and damages, according to proof;

27. For premium wages pursuant to California Labor Code section 226.7(c);

28. For pre-judgment interest on any unpaid wages from the date such amounts were due;

and

29. For such other and further relief as the Court may deem just and proper.

#### **As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

31. For actual, consequential and incidental losses and damages, according to proof;

32. For statutory penalties pursuant to California Labor Code section 226(e);

1           33.     For injunctive relief to ensure compliance with this section, pursuant to California  
2 Labor Code section 226(h); and

3           34.     For such other and further relief as the court may deem just and proper.

4                               **As to the Sixth Cause of Action**

5           35.     That the Court declare, adjudge and decree that Defendants violated California Labor  
6 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of  
7 termination of the employment of Plaintiff and the other class members no longer employed by  
8 Defendants;

9           36.     For all actual, consequential, and incidental losses and damages, according to proof;

10          37.     For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff  
11 and the other class members who have left Defendants' employ;

12          38.     For pre-judgment interest on any unpaid compensation from the date such amounts  
13 were due; and

14          39.     For such other and further relief as the court may deem just and proper.

15                               **As to the Seventh Cause of Action**

16          40.     That the Court declare, adjudge, and decree that Defendants violated California  
17 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other  
18 class members all overtime compensation due to them, failing to provide them all minimum wages  
19 due to them, failing to provide all meal and rest periods to them, failing to provide them accurate,  
20 itemized wage statements, failing to timely pay them all wages due during their employment, failing  
21 to timely pay them all wages due upon termination, and failing to keep accurate payroll records;

22          41.     For restitution of unpaid wages to Plaintiff and the other class members and all pre-  
23 judgment interest from the day such amounts were due and payable;

24          42.     For the appointment of a receiver to receive, manage and distribute any and all funds  
25 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a  
26 result of violation of California Business and Professions Code sections 17200, et seq.;

27          43.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to California  
28 Code of Civil Procedure section 1021.5;

1           44.     For injunctive relief to ensure compliance with this section, pursuant to California  
2 Business and Professions Code sections 17200, et seq.; and

3           45.     For such other and further relief as the Court may deem just and proper.

4                               **As to the Eighth Cause of Action**

5           46.     For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f),  
6 and (g), plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203,  
7 204, 226, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198; and

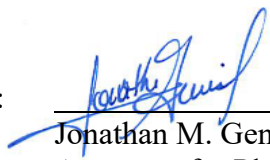
8           47.     For such other and further relief as the Court may deem proper.

9                                               Respectfully Submitted,

10       Dated: August 27, 2021

**BLACKSTONE LAW, APC**

11  
12                                               By: \_\_\_\_\_

  
Jonathan M. Genish

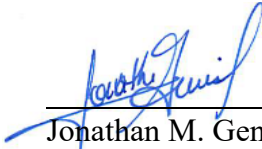
Attorneys for Plaintiff RICHARD EVANS

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff RICHARD EVANS hereby demands a jury trial with respect to all issues triable of  
3 right by jury.

4 Dated: August 27, 2021

**BLACKSTONE LAW, APC**

5  
6 By:  \_\_\_\_\_

7 Jonathan M. Genish

8 Attorneys for Plaintiff RICHARD EVANS  
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