

THE HALL LAW GROUP, APC

Corey A. Hall (SBN: 295470)
Corey@HallTrialAttorney.com
523 North Fairview Street
Santa Ana, California 92703
Tel: (949) 203-1682
Fax: (949) 271-5649

Assigned For All Purposes

Judge Randall J. Sherman

CX-105

Attorneys for Plaintiff GARY STOLTENBERG

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

GARY STOLTENBERG,

Plaintiff,

vs.

CALIFORNIA MANTEL &
FIREPLACE, INC., a California
Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2022-01246285-CU-WT-CXC

**PLAINTIFF GARY STOLTENBERG'S
COMPLAINT FOR DAMAGES FOR:**

- 1. RETALIATION IN VIOLATION OF
CALIFORNIA LABOR CODE
SECTION 98.6;**
- 2. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 3. FAILURE TO PAY OVERTIME
WAGES;**
- 4. FAILURE TO PAY ALL WAGES,
COMMISSIONS, AND BENEFITS OF
THE EMPLOYMENT WHEN DUE;**
- 5. FAILURE TO PROVIDE MEAL AND
REST PERIODS;**
- 6. FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS;**
- 7. UNFAIR BUSINESS PRACTICES
UNDER CALIFORNIA BUSINESS &
PROFESSIONS CODE;**

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**8. FAILURE TO PROVIDE
REIMBURSEMENT OF BUSINESS
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §
2802(A)**

**9. VIOLATION OF CALIFORNIA
LABOR CODE §§ 2698, ET SEQ.
("PAGA");**

DEMAND FOR JURY TRIAL

Plaintiff, GARY STOLTENBERG, alleges, on the basis of personal knowledge
and/or information and belief:

SUMMARY

1. This is an action by Plaintiff, GARY STOLTENBERG, (hereafter, "Stoltenberg" or "Plaintiff"), who was not paid all of his earned wages and wrongfully terminated while employed by Defendant CALIFORNIA MANTEL & FIREPLACE, INC., (hereafter "California Mantel"). Plaintiff Stoltenberg brings this action against Defendants for Defendants for economic, non-economic, compensatory, and punitive damages, pursuant to *Civil Code* section 3294, pre-judgment interest pursuant to *Code of Civil Procedure* section 3291, and costs and reasonable attorneys' fees pursuant to *California Labor Code* sections 510, 1194(a), 201-203, 226, and 1198.5.

2. Plaintiff Additionally brings this action on behalf of himself and all other Aggrieved Employees of Defendants, and as a Private Attorney General on behalf of the State of California against Defendants for the recovery of civil penalties under the Private Attorneys General Act of 2004, *California Labor Code* sections 2698, et seq. ("PAGA"), based on violations of the *California Labor Code*, including 1) failure to pay overtime and double time wages, 2) failure to provide meal and rest periods, 3) failure to pay wages, 4) failure to provide accurate, itemized wage statements, and 5) failure to reimburse

employees for necessary work related business expenses, and the misclassification of employees an independent contractors.

3. All allegations in this Complaint are based upon information and belief except for those allegations that pertain to Plaintiff named herein and his counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

PARTIES

4. *Plaintiff:* Plaintiff Stoltenberg is, and at all times herein mentioned was, a resident of the County of Orange, California.

5. *Defendant:* Defendant California Mantel is, and at all times herein mentioned was, a limited liability company existing under the laws of the State of California. Defendant California Mantel is, and at all times mentioned in this Complaint was, authorized to operate by the State of California and the United States government and authorized and qualified to do business in the County of Orange. Defendant's place of business is, and was, in the County of Orange, at 1430 South Anaheim Boulevard, CA 92805.

6. *Doe Defendants:* Defendants Does 1 to 100, inclusive, are sued under fictitious names pursuant to *Code of Civil Procedure* section 474. Plaintiff Stoltenberg is informed and believes, and on that basis alleges, that each of the Defendants sued under fictitious names is in some manner responsible for the wrongs and damages alleged below, in so acting was functioning as the agent, servant, partner, and employee of the Co-Defendants, and in taking the actions mentioned below was acting within the course and scope of his or her authority as such agent, servant, partner, and employee, with the permission and consent of the Co-Defendants. The named Defendants and Doe Defendants are sometimes hereafter referred to, collectively and/or individually, as "Defendants."

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1 7. *Relationship of Defendants:* All Defendants were responsible for the events
2 and damages alleged herein, including on the following bases: (a) Defendants committed
3 the acts alleged; (b) at all relevant times, one or more of the Defendants was the agent or
4 employee, and/or acted under the control or supervision, of one or more of the remaining
5 Defendants and, in committing the acts alleged, acted within the course and scope of such
6 agency and employment and/or is or are otherwise liable for Plaintiff's damages; (c) at all
7 relevant times, there existed a unity of ownership and interest between or among two or
8 more of the Defendants such that any individuality and separateness between or among
9 those defendants has ceased, and Defendants are the alter egos of one another.
10 Defendants exercised domination and control over one another to such an extent that any
11 individuality or separateness of defendants does not, and at all times herein mentioned
12 did not, exist. Adherence to the fiction of the separate existence of Defendants would
13 permit abuse of the corporate privilege and would sanction fraud and promote injustice.
14 All actions of all Defendants were taken by employees, supervisors, executives, officers,
15 and directors during employment with all defendants, were taken on behalf of all
16 Defendants, and were engaged in, authorized, ratified, and approved of by all other
17 Defendants.

18 8. Finally, at all relevant times mentioned herein, all Defendants acted as
19 agents of all other Defendants in committing the acts alleged herein.
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21 **FACTS COMMON TO ALL CAUSES OF ACTION**

22 9. *Plaintiff's hiring:* Plaintiff Stoltenberg was hired by California Mantel on
23 October 22, 2020. California Mantel hired him as an Outside Sales Product Specialist.
24 Plaintiff's annual base salary was set at \$45,000 per year, with a 3.5% commission earned
25 on sales over \$45,000 per month.

26 10. *Plaintiff's exempt status:*

27 a. Plaintiff was classified as an exempt employee with an annual base salary.
28 However, Defendants misclassified Plaintiff as an exempt employee.

1 b. Plaintiff did not meet the “outside sales” exemption because roughly 75
2 percent of his time was spent doing non-outside-sales activities, including project
3 management, estimating, and customer service.

4 c. Furthermore, Plaintiff did not meet the administrative exemption because
5 Plaintiff performed clerical-type and administrative tasks more than 50% of the time he
6 spent at work. Additionally, Plaintiff’s primary duties did not involve the exercise of
7 discretion and independent judgment with respect to matters of significance.

8 11. *Plaintiff’s job performance:* Throughout his employment, Plaintiff
9 Stoltenberg performed his duties above expectations, was well liked by others, and
10 excelled in his position.

11 12. *Plaintiff’s protected status and activity:*

12 a. Plaintiff made complaints regarding wage-and-hour violations.

13 b. Plaintiff told his employer he hired an attorney for Defendants’ wage-and-
14 hour violations.

15 13. *Defendant California Mantel:*

16 a. California Mantel is a distributor and installer of mantels and fireplaces.

17 14. *Defendant’s adverse employment actions and unlawful conduct:*

18 a. On October 22, 2020, Defendants sent Plaintiff an employment-offer letter
19 outlining the principal terms and benefits of his employment.

20 b. Under the terms of the offer, Plaintiff would be compensated with a base
21 salary set at \$45,000 per year.

22 c. Additionally, Plaintiff would earn a 3.5% commission on sales over \$45,000
23 per month.

24 d. In the offer, Defendants stated that the position would be salary, and the
25 hours required for the position would be approximately 9-11 hours per day.

26 e. Finally, the offer specified that, “[t]he at-will nature of the employment
27 relationship may not be altered or modified by the conduct of the parties or by
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1 implication; it may be changed only by written agreement signed by you and an
2 authorized representative of the Company.”

3 f. Plaintiff accepted Defendants’ offer and began working for Defendants on
4 October 26, 2020.

5 g. In Plaintiff’s first month working for Defendants, November 2020, Plaintiff
6 reached sales of over \$45,000 per month. Defendant failed to pay Plaintiff any of his
7 earned commissions.

8 h. In December 2020, Plaintiff reached sales of over \$45,000 per month.
9 Defendant failed to pay Plaintiff any of his earned commissions.

10 i. On January 26, 2021, Plaintiff e-mailed Defendants and asked if Defendants
11 had a mileage form that he should be filling out for work-related mileage.

12 j. Defendants responded that Plaintiff did not need to track it for them, but if
13 Plaintiff had a CPA, “you can ask him if you track it.” Defendants additionally stated, “I
14 think you can write it off as an expense...I think.”

15 k. For the month of January 2021, Plaintiff reached sales of over \$45,000 per
16 month. Defendant failed to pay Plaintiff any of his earned commissions.

17 l. Again, in February 2021, Plaintiff reached sales of over \$45,000 per month.
18 Defendant failed to pay Plaintiff any of his earned commissions.

19 m. On March 9, 2021, Plaintiff e-mailed Defendants and explained that
20 Plaintiff’s accountant notified him that Defendants are required to reimburse Plaintiff for
21 necessary expenditures, including mileage.

22 n. For the month of March 2021, Plaintiff reached sales of over \$45,000 per
23 month. Defendant failed to pay Plaintiff any of his earned commissions.

24 o. On April 2, 2021, Defendants sent Plaintiff a document titled
25 “Acknowledgment of Reimbursement for Mileage.”

26 p. In this letter, Defendants stated “[a]s you may be aware, the California
27 Labor Code requires that an employee be indemnified for all necessary expenditures
28 incurred by them in direct consequence of the discharge of their duties.”

1 q. Defendants went on to state “[i]n determining an appropriate amount of
2 reimbursement for the mileage you incur on a regular basis in the performance of your
3 duties, California Mantel & Fireplace, Inc. calculated the average cost of fuel, repair,
4 maintenance, insurance and depreciation incurred as a result of the duties of an outside
5 salesperson over the course of a typical year and made a corresponding increase in base
6 salary from \$37,800 to \$45,000. Moving forward, this will be reflected on your paystubs
7 as a ‘reimbursement’ as opposed to part of your base salary as an effort to clarify your
8 compensation.”

9 r. Unwilling to go along with Defendants’ charade of retroactively including
10 reimbursement of necessary expenditures in Plaintiff’s initial agreed upon salary, Plaintiff
11 refused to sign the document.

12 s. In April 2021, Defendants finally began to pay Plaintiff some of his earned
13 commissions for that month.

14 t. Nevertheless, Defendants still did not pay Plaintiff for any of his earned
15 commissions for November 2020 through March 2021.

16 u. Furthermore, Defendants refused to provide Plaintiff documentation in
17 April 2021 demonstrating what his commissions were based on.

18 v. For the remainder of Plaintiff’s employment, Defendants continued this
19 pattern—they sporadically paid Plaintiff commissions, but refused to provide Plaintiff
20 with documentation or explain to Plaintiff what the commissions were based on.

21 w. In September 2021, Plaintiff made several complaints regarding
22 Defendants’ failure to pay Plaintiff all his owed wages and expenses.

23 x. Plaintiff continued making complaints regarding Defendants’ failure to pay
24 Plaintiff all his owed wages and expenses.

25 x. On October 15, 2021, Plaintiff wrote Defendants complaining that
26 Defendants shorted him for his salary during that pay period.

27 y. On November 4, 2021, Plaintiff made another complaint to Defendants
28 regarding Defendants’ failure to pay him all his owed wages and expenses.

1 z. In response, Defendants asked Plaintiff if he filed a claim with the California
2 Labor Board.

3 aa. Plaintiff stated that he had not filed a claim with the California Labor Board,
4 but that he had hired a private attorney to represent him for Defendants' continued wage
5 and hour violations.

6 bb. On November 8, 2021—just four days after telling Defendants he had hired
7 an attorney—Defendants terminated Plaintiff, ostensibly for not appearing at Defendants'
8 showroom when asked.

9 15. *Defendants' PAGA violations:*

10 a. Plaintiff and other Aggrieved Employees would on a regular basis work in
11 excess of eight hours per day, and/or forty hours per week, but did not receive proper
12 overtime compensation for all of those hours worked.

13 b. Defendants failed to issue accurately itemized wage statements to Plaintiff
14 and other Aggrieved Employees as required by Labor Code §226, et seq. More specifically,
15 Defendants have violated Labor Code §226, et seq. by failing to properly and accurately
16 set forth for Plaintiff and other Aggrieved Employees: (i) all of the hours worked; (ii) the
17 number of overtime hours; (iii) the number of double-time hours; (iv) overtime rate; (v)
18 double-time rate; (vi) actual gross wages earned; and (vii) actual net wages earned.

19 c. The wage statements only listed some, but not all, of the Plaintiff and other
20 Aggrieved Employees' regular hours, and in most instances, none of their overtime or
21 double-time hours, even though they did work overtime and/or double-time.

22 d. For the overtime and double-time hours Defendants failed to set forth, they
23 also failed to set forth the corresponding overtime and double rates. Lastly, the gross and
24 net wages "earned" were also not accurately listed on each wage statement, and
25 different/lower gross and net wages were listed, instead of the actual gross and net wages
26 earned.

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1 e. On a regular basis, it was necessary for Plaintiff and other Aggrieved
2 Employees to use their personal vehicles for the benefit of Defendants and in direct
3 discharge of their work-related duties.

4 f. Despite the necessity of using their personal vehicles for work-related
5 matters and activities, and despite incurring expenses as a direct consequence of
6 discharge of their duties, Plaintiff and other Aggrieved Employees were never reimbursed
7 for a reasonable portion of expenses for the use of their personal vehicles, as mandated
8 by *California Labor Code* § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014)
9 228 Cal.App.4th 1137.

10 g. On a regular basis, Plaintiff and other Aggrieved Employees were either not
11 provided, or were unable to take, uninterrupted meal and rest breaks, in violation of
12 *California Labor Code* §§ 226.7 and 512. If they were able to take any meal or rest breaks
13 at all, they were interrupted. In some instances, Plaintiff and other Aggrieved Employees
14 were even told by the management that they were not allowed to take their meal or rest
15 breaks, and were prevented from doing so. No meal or rest break premiums were paid to
16 Plaintiff and other Aggrieved Employees for their missed meal and rest breaks.

17 h. Plaintiff, and upon information and belief, other former Aggrieved
18 Employees of Defendants were not properly and completely paid all of their wages owed
19 (including without limitation minimum wages, overtime and double-time wages as
20 described above) upon termination, or within 72 hours thereafter, as required by the
21 *California Labor Code*.

22 16. *Economic damages:* As a consequence of Defendants' conduct, Plaintiff
23 Stoltenberg has suffered and will suffer harm, including lost wages, overtime, unpaid
24 expenses, and penalties, as well as interest on unpaid wages at the legal rate from and
25 after each payday on which those wages should have been paid, in a sum to be proven at
26 trial.

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1 17. *Non-economic damages:* As a consequence of Defendants’ conduct,
2 Plaintiff Stoltenberg has suffered and will suffer psychological and emotional distress,
3 humiliation, and mental and physical pain and anguish, in a sum to be proven at trial.

4 18. *Punitive damages:* Defendants’ conduct constitutes oppression, fraud,
5 and/or malice under *Civil Code* section 3294 and, thus, entitles Plaintiff Stoltenberg to
6 an award of exemplary and/or punitive damages.

7 a. *Malice:* Defendants’ conduct was committed with malice within the
8 meaning of *Civil Code* section 3294, including that (a) Defendants acted with intent to
9 cause injury to Plaintiff Stoltenberg and/or acted with reckless disregard for Plaintiff
10 Stoltenberg’s injury, including by terminating his employment and/or taking other
11 adverse job actions against him because of his race, national origin, color, sexual
12 orientation, marital status, and/or good faith complaints, and/or (b) Defendants’ conduct
13 was despicable and committed in willful and conscious disregard of Plaintiff’s rights,
14 health, and safety, including Plaintiff’s right to be free of discrimination, harassment,
15 retaliation, and wrongful employment termination.

16 b. *Oppression:* In addition, and/or alternatively, Defendants’ conduct was
17 committed with oppression within the meaning of *Civil Code* section 3294, including that
18 Defendants’ actions against Plaintiff because of his race, national origin, color, sexual
19 orientation, marital status, and/or good faith complaints were “despicable” and subjected
20 Plaintiff to cruel and unjust hardship, in knowing Disregard of Plaintiff’s rights to a
21 workplace free of discrimination, harassment, retaliation, and wrongful employment
22 termination.

23 c. *Fraud:* In addition, and/or alternatively, Defendants’ conduct, as alleged,
24 was fraudulent within the meaning of *Civil Code* section 3294, including that Defendants
25 asserted false (pretextual) grounds for terminating Plaintiff’s employment and/or other
26 adverse job actions, thereby to cause Plaintiff Stoltenberg hardship and deprive him of
27 legal rights.

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19. *Exhaustion of administrative remedies:* On or about October 12, 2021, Plaintiff notified the California Labor and Workforce Development Agency (“LWDA”), via the LWDA online filing portal of Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties under *California Labor Code* § 2698, et seq. with respect to violations of the *California Labor Code* identified above. This notice was also sent via Certified U.S. mail to Defendants on October 12, 2021. Now that at least sixty-five days have passed from Plaintiff notifying Defendants of these violations and the LWDA having taken no action, Plaintiff has exhausted her administrative requirements for bringing a claim under the PAGA with respect to these violations.

20. *Attorney's fees:* Plaintiff Stoltenberg has incurred and continues to incur legal expenses and attorneys' fees.

FIRST CAUSE OF ACTION

(Retaliation for Making a Protected Complaint—

Violation of Labor Code § Labor Code Section 98.6—

Against Defendants California Mantel and Does 1 to 100, Inclusive)

21. Plaintiff Stoltenberg realleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

22. At all times herein mentioned, *California Labor Code* Section 98.6(a) was in full force and effect. This statute, which encompasses the public policy of the State of California, essentially provides that an employer in the State of California shall not discharge or in any manner discriminate against any employee because the employee made a valid complaint about the nonpayment of wages due under an oral and/or written express contract with his or her employer.

23. Plaintiff Stoltenberg was wrongfully terminated as a direct and proximate response to requesting his rightfully earned wages, in violation of *California Labor Code* § 98.6.

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1 24. As a proximate result of Defendants' willful, knowing, and intentional
2 retaliation, Plaintiff Stoltenberg has sustained and continues to sustain substantial losses
3 of earnings and other employment benefits.

4 25. As a proximate result of Defendants' willful, knowing, and intentional
5 retaliation, Plaintiff Stoltenberg has suffered and continues to suffer humiliation,
6 emotional distress, and mental and physical pain and anguish, all to his damage in a sum
7 according to proof.

8 26. This action is also brought under *California Labor Code* §§ 218, 218.5, and
9 218.6, which provide that any employee not receiving all wages earned by that employee
10 is entitled to recover in a civil action the unpaid balance of the full amount of this time
11 worked, including interest thereon, reasonable attorney's fees, and costs of suit.

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13 **SECOND CAUSE OF ACTION**

14 **(Wrongful Termination of Employment in Violation of**
15 **Public Policy—Labor Code § 98.6— Against Defendants**
16 **California Mantel and Does 1 to 100, Inclusive)**

17 27. Plaintiff Stoltenberg realleges and incorporates by reference all preceding
18 paragraphs, inclusive, as though set forth in full herein.

19 28. Defendants terminated Plaintiff's employment in violation of various
20 fundamental public policies underlying both state and federal laws. Specifically, Plaintiff's
21 employment was terminated in part because of his good faith complaints. These actions
22 were in violation of *California Labor Code* section 98.6.

23 29. As a proximate result of Defendants' wrongful termination of Plaintiff's
24 employment in violation of fundamental public policies, Plaintiff has suffered and
25 continues to suffer humiliation, emotional distress, and mental and physical pain and
26 anguish in a sum according to proof.

27 30. As a result of Defendants' wrongful termination of Plaintiff's employment,
28 Plaintiff has suffered general and special damages in sums according to proof.

31. Defendants' wrongful termination of Plaintiff's employment was done intentionally, in a malicious, fraudulent, oppressive, fraudulent manner, entitling Plaintiff to punitive damages.

32. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to *Code of Civil Procedure* sections 1021.5 and 1032, *et seq.*, Plaintiff is entitled to recover reasonable attorney's fees and costs in an amount according to proof.

THIRD CAUSE OF ACTION
(Failure to Pay Overtime Compensation—Violation of Labor
Code §§ 510, 1194(a), And Pertinent IWC Wage Orders—
Against Defendants California Mantel and Does 1 to 100, Inclusive)

33. Plaintiff Stoltenberg realleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

34. At all times herein mentioned *Labor Code* sections 510 and 1194(a) were in full force and effect and governed the terms and conditions of Plaintiff's employment with Defendants.

35. Among other things, *Labor Code* section 510 provided that a non-exempt employee like Plaintiff was entitled to overtime compensation for more than 8 hours per day of work and more than 40 hours of work per week. *Labor Code* section 1194(a) provided Plaintiff with a private cause of action to address Defendants' failure to pay overtime compensation to him.

36. Pursuant to IWC Order 4-2001, *California Code of Regulations*, Title 8, section 11010, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two times the regular rate of pay for hours worked in excess of twelve (12) hours per day.

37. At all times herein mentioned, Plaintiff Stoltenberg was a non-exempt employee entitled to the protections of *Labor Code* section 510 and IWC Order 4-2001,

California Code of Regulations, Title 8, § 11010. During the course of Plaintiff's employment, Defendants, and each of them, failed to compensate Plaintiff for overtime hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, or double time for hours worked in excess of twelve (12) hours or for each seventh consecutive day of eight (8) hours as required under the aforementioned labor regulations.

38. As a direct consequence of the failure to pay overtime compensation to Plaintiff Stoltenberg, in accordance with specific statutes in the *Labor Code*, Plaintiff has sustained compensatory damages in an amount according to proof. In addition, Plaintiff Stoltenberg is entitled to statutory "waiting-time penalties" pursuant to *Labor Code* section 203 and relevant subdivisions. Plaintiff Stoltenberg is also entitled to prejudgment interest on any unpaid sums for overtime compensation.

FOURTH CAUSE OF ACTION

(Failure to Pay All Wages, Commissions, and Benefits of the Employment When Due—Violation of Labor Code § 201-203— Against Defendants California Mantel and Does 1 to 100, Inclusive)

39. Plaintiff Stoltenberg realleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

40. At all times herein mentioned *Labor Code* sections 201-203 were in full force and effect and governed the terms and conditions of Plaintiff's employment with Defendants.

41. Among other things, *Labor Code* sections 201-203 provide that an employee is to be paid all wages, commissions and benefits of the employment that are due to him or her as of the last day of his or her employment. Further, these statutes provide for "waiting-time" penalties in the event of an employer violation.

42. At all times herein mentioned, Plaintiff Stoltenberg was owed due wages at the time he was terminated, but was not paid due wages owed then, or at any time

thereafter as required, thus causing Plaintiff to sustain the compensatory damages alleged herein in an amount according to proof at the trial of this action.

43. This action is also brought under *Labor Code* sections 218, 218.5, and 216, which provide that any employee not receiving all wages earned by that employee is entitled to recover in a civil action, the unpaid balance of the full amount of this time worked, including interest thereon, reasonable attorney's fees, and costs of suit.

FIFTH CAUSE OF ACTION

(Failure to Pay for Rest Breaks and Meal Periods—

Violation of Labor Code §§ 226.7, 512—Against

Defendants California Mantel and Does 1 to 100, Inclusive)

44. Plaintiff Stoltenberg realleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

45. At all times herein mentioned, *Labor Code* sections 226.7 and 512 were in full force and effect. Section 226.7 deals with uninterrupted rest breaks of 10 minutes per rest break for every 4 hours worked. Section 512 deals with meal periods for 30 minutes for every 5 hours worked. These statutes are also covered by state regulations contained at *Cal. Code Regs.*, tit. 8, section 11040, subds. 11 & 12.

46. At all times herein mentioned during his employment with Defendants, Plaintiff Stoltenberg was intentionally not provided with the opportunity to take any rest periods or meal breaks. Defendants also did not keep accurate time records of either rest breaks or meal periods.

47. Plaintiff Stoltenberg, pursuant to his statutory and regulatory remedies, is entitled to one hour of pay for each day of employment if which he did not receive either rest break(s) or meal periods, all in an amount according to proof at the trial of the action.

48. Plaintiff Stoltenberg is entitled to prejudgment interest, and is also entitled to attorneys' fees and costs pursuant *Labor Code* section 218.5.

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1 **SIXTH CAUSE OF ACTION**

2 **(Failure to Furnish Accurate Wage Statements—**
3 **Pursuant to Labor Code §§ 226 and 226.3 and I.W.C.**
4 **Wage Order No. 4—Against Defendants**
5 **California Mantel and Does 1 to 100, Inclusive)**

6 49. Plaintiff Stoltenberg realleges and incorporates by reference all preceding
7 paragraphs, inclusive, as though set forth in full herein.

8 50. At all times herein mentioned, *Labor Code* section 226(a) and I.W.C.
9 Wage Order No. 4 (section 7[B]) require employers semi-monthly or at the time of each
10 payment of wages to furnish each California employee with a statement itemizing, among
11 other things, the total hours worked by the employee. *Labor Code* section 226, provides
12 that if an employer knowingly and intentionally fails to provide a statement itemizing,
13 among other things, the total hours worked by the employee, then the employee is entitled
14 to recover the greater of all actual damages or \$50.00 for the initial violation and \$100.00
15 for each subsequent violation, up to \$4,000.00.

16 51. At all times herein mentioned, Defendants acted knowingly and
17 intentionally in failing to provide Plaintiff Stoltenberg with timely, itemized statements
18 showing the total hours worked as required by law. As a result, Defendants are liable to
19 Plaintiff for the amount provided by *Labor Code* section 226(b), all to be determined
20 according to proof at trial.

21
22 **SEVENTH CAUSE OF ACTION**

23 **(Unfair Business Practices—Pursuant to Business**
24 **& Professions Code, §§ 17200, Et. Seq.—Against Defendants**
25 **California Mantel and Does 1 to 100, Inclusive)**

26 52. Plaintiff Stoltenberg realleges and incorporates by reference all preceding
27 paragraphs, inclusive, as though set forth in full herein.

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1 53. The foregoing conduct, as alleged, violates the provisions of *Business &*
2 *Professions Code* sections 17200, et seq. (hereafter “UCL”).

3 54. Beginning at a date unknown to Plaintiff Stoltenberg, but at least as long
4 ago as two years preceding the date this Complaint is filed, Defendants committed, and
5 continue to commit, acts of unfair competition by, among other things, engaging in the
6 unlawful acts and other employees of Defendants by virtue of the unfair practices set forth
7 herein. Defendants’ conduct, as alleged herein, has injured Plaintiff by wrongfully
8 denying Plaintiff his earned compensation, and therefore was substantially injurious to
9 Plaintiff and other similarly-situated employees of Defendants.

10 55. Defendants engaged in unfair competition in violation of the UCL by
11 violating, inter alia, each of the following laws:

12 (A) *California Labor Code* section 1194.

13 (B) *California Labor Code* section 510.

14 (C) I.W.C. Wage Order No. 4-2001, section 12A.

15 (D) *California Labor Code* sections 201, 202, 203, 204, and 226.

16 56. Defendants’ course of conduct, acts, and practices in violation of the
17 California laws mentioned in the above paragraph constitutes a separate and independent
18 instance of unlawful conduct under the UCL. Additionally, Defendants’ conduct described
19 herein violates the policy of such laws or otherwise significantly threatens or harms
20 competition and thus constitutes an unfair business practice under the UCL.

21 57. The harm to the Plaintiff Stoltenberg in being wrongfully denied lawfully
22 earned wages outweighs the utility, if any, of the Defendants’ policies or practices and,
23 therefore, Defendants’ actions described herein constitute an unfair business practice or
24 act within the meaning of the UCL.

25 58. The unlawful and unfair business practices and acts of Defendants,
26 described above, have injured Plaintiff Stoltenberg in that he was wrongfully denied the
27 payment of earned compensation.

28 ///

1 59. Plaintiff Stoltenberg seeks restitution from Defendants of all ill-gotten gains
2 obtained as a result of the unfair business practices described in this Complaint,
3 including, but not limited to, all unlawfully withheld wages, overtime pay, and other
4 compensation, all in an amount according to proof at the trial of this action.

5
6 **EIGHTH CAUSE OF ACTION**

7 **(Failure to Provide Reimbursement of Business Expenses —**
8 **Violation of Labor Code § 2802(a)—Against**
9 **Defendants California Mantel and Does 1 to 100, Inclusive)**

10 60. Plaintiff Stoltenberg realleges and incorporates by reference all preceding
11 paragraphs, inclusive, as though set forth in full herein.

12 61. At all times herein mentioned, *Labor Code* sections 2802 was in full force
13 and effect. Under this section of the *Labor Code*, Defendants were required to reimburse
14 Plaintiff Stoltenberg for expenses incurred in the direct consequence of the discharge of
15 his duties.

16 62. At all times herein mentioned during his employment with Defendants,
17 Plaintiff Stoltenberg incurred business expenses in direct consequence of the discharge of
18 his duties, including but not limited to use of his personal vehicle for business purposes
19 for the benefit of Defendants.

20 63. Defendants failed to reimburse Plaintiff Stoltenberg for his business
21 expenses, in violation of Labor Code § 2802.

22 64. As a proximate result of Defendants' violation of *Labor Code* § 2802,
23 Plaintiff Stoltenberg has been damaged in an amount according to proof at the time of
24 trial.

25 65. As a further proximate result of Defendants' violation of *Labor Code* § 2802,
26 Plaintiff Stoltenberg has incurred reasonable attorney's fees and costs of suit and,
27 pursuant to Labor Code § 2802(c), Plaintiff is entitled to recovery of all reasonable costs,
28 including, but not limited to attorney's fees.

1 **NINTH CAUSE OF ACTION**

2 **(Civil Penalties Pursuant to Private Attorney General Act**

3 **(“PAGA”)—Labor Code § 2698, et. seq.— Against**

4 **Defendants California Mantel and Does 1 to 100, Inclusive)**

5 66. Plaintiff Stoltenberg realleges and incorporates by reference all preceding
6 paragraphs, inclusive, as though set forth in full herein.

7 67. At all times herein mentioned, *Labor Code* §§ 2698-2699, the Labor Code
8 Private Attorneys General Act of 2004, expressly establishes that any provision of the
9 Labor Code, which provides for a civil penalty to be assessed and collected by the Labor
10 and Workforce Development Agency ("LWDA"), or any of its departments, divisions,
11 commissions, boards agencies or employees for a violation of the Labor Code, may be
12 recovered through a civil action brought by an aggrieved employee on behalf of himself
13 or herself, and other current or former employees.

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

18 69. Plaintiff is an “Aggrieved Employee” as defined by *Labor Code* § 2698, et
19 seq., in that he is a former employee of Defendants, and one or more of the alleged
20 violations alleged in this Complaint was committed against him.

21 70. Defendants have committed several *Labor Code* violations against Plaintiff
22 and other Aggrieved Employees. Plaintiff, brings this representative action against
23 Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and
24 the State of California according to proof, pursuant to *Labor Code* § 2699, including, but
25 not limited to: 1) \$100.00 for each initial violation for each failure to pay each employee
26 and \$200.00 for each subsequent violation or willful or intentional violation pursuant to
27 *Labor Code* § 210 for each failure to pay each employee, plus 25% of the amount
28 unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each

subsequent violation pursuant to *Labor Code* § 1197.1 per employee per pay period; (3) \$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 (4) \$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. Defendants violated *Labor Code* §§ 510, 558, 1194, and 1198 by failing to pay Plaintiff and other Aggrieved Employees all overtime and double-time compensation earned;

b. Defendants violated *Labor Code* § 226 by failing to furnish Plaintiff and other Aggrieved Employees with accurate and compliant itemized wage statements;

c. Defendants violated *Labor Code* § 1174 by failing to maintain accurate records on behalf of Plaintiff and other Aggrieved Employees;

d. Defendants violated *Labor Code* § 2802 by failing to reimburse Plaintiff and other Aggrieved Employees for all business-related expenses;

e. Defendants violated *Labor Code* §§ 226.7 and 512 by failing to provide Plaintiff and other Aggrieved Employees uninterrupted rest and meal periods, and/or provide a one-hour premium in lieu thereof;

f. Defendants violated *Labor Code* §§ 203 by failing to pay Plaintiff and other Aggrieved former Employees all wages due upon termination;

71. Pursuant to *Labor Code* § 2699, Plaintiff, individually, and on behalf of all Aggrieved Employees, and as a representative of the State of California, requests and is entitled to recover from Defendants' penalties according to proof, attorney's fees, and costs of suit herein.

72. In addition, Plaintiff seeks and is entitled to have 75 percent of all penalties recovered pursuant to *Labor Code* §§ 2698, et seq., allocated to the LWDA and 25 percent to the Aggrieved Employees.

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73. Further, Plaintiff seeks and is entitled to recover reasonable attorney's fees and costs pursuant to *Labor Code*, including without limitation, sections 2699, et seq., 218.5, et seq., and 210, et seq.

74. Plaintiff, as a representative, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one year period before Plaintiff filed her Notice with the LWDA of her intent to bring this action, up to the date of adjudication of this case, in an amount according to proof. Funds recovered will be distributed in accordance with the provisions of PAGA.

75. On information and belief, Plaintiff alleges that Defendants have violated and continue to violate provisions of the *Labor Code* and applicable Wage Orders set forth herein. As such the foregoing violations are ongoing, and the corresponding penalties are requested until this case is adjudicated, and/or Defendants' illegal practices stopped.

PRAYER

WHEREFORE, Plaintiff prays for judgment against defendants as follows:

1. For special damages according to proof;

2. For pre-judgment exemplary damages and post-judgment interest on all damages awarded;

3. For reasonable attorney's fees pursuant or reasonable attorney's fees pursuant to *Labor Code* §§203, 218.5, 226, 248.5, 1194, and/or 2802, *Code of Civil Procedure* §1021.5, Business and Professions Code §§ 17200, et seq., and all and any other applicable laws and statutes;

4. For costs of suit incurred;

5. For penalties permitted by *Labor Code* §§ 201, 202, 203, 204, 210, 225.5, 223, 226, 226.3, 226, 226.3, 226.7, 227.3, 248.5, 432, 510, 512, 558, 1171, 1173, 1173.1, 1194, 1194.2 and 1198.5;

6. For restitution in an amount according to proof for the Unfair Business Practices claim;

1 7. For applicable civil penalties pursuant to PAGA, to be apportioned between
2 the employees and the LWDA;

3 8. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
4 Aggrieved Employees, and the State of California according to proof pursuant to *Labor*
5 *Code* § 2699, et seq. including, but not limited to: (1) \$100.00 for each initial violation for
6 each failure to pay each employee and \$200.00 for each subsequent violation or willful
7 or intentional violation pursuant to *Labor Code* § 210 for each failure to pay each
8 employee, plus 25% of the amount unlawfully withheld; (2) \$100.00 for each initial
9 violation and \$250.00 for each subsequent violation pursuant to *Labor Code* § 1197.1 per
10 employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each
11 subsequent violation pursuant to *Labor Code* § 226.3 per employee per pay period;
12 and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation
13 per employee per pay period for those violations of the *Labor Code* for which no civil
14 penalty is specifically provided, based on the violations of *Labor Code* sections cited in
15 Paragraph 70 (a)-(f) above; and

16 9. For such other and further relief as the Court may deem just and proper.
17

18 DATED: February 11, 2022

THE HALL LAW GROUP, APC

19
20 

21 By: _____
22 Corey A. Hall, Esq.
23 Attorneys for Plaintiff,
24 GARY STOLTENBERG
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28

DEMAND FOR JURY TRIAL

Plaintiff Stoltenberg demands a jury trial.

DATED: February 11, 2022

THE HALL LAW GROUP, APC



By: _____
Corey A. Hall, Esq.
Attorneys for Plaintiff,
GARY STOLTENBERG