

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

OLIVER SALAS MONDRAGON, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

UFP RIVERSIDE, LLC, a California limited
liability company; and DOES 1 through 100,

Defendants.

Case No. CVRI2104543

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512,
558, 1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558,
1198);**
- (4) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **UNLAWFUL DEDUCTIONS FROM
EARNED WAGES (LABOR CODE
§§ 221-223);**
- (7) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802, 2804);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

**(9) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Oliver Salas Mondragon (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against UFP Riverside, LLC; and DOES 1 to 100, inclusive (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 221-223, 226, 226.7, 510, 512, 516, 558, 1194,
9 1198, 2802, 2804, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order (“Wage
10 Order 7”), in addition to seeking declaratory relief and restitution. This Complaint is brought
11 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
24 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
25 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
26 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
27 by Labor Code §§ 201-204, 221-223, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2802, 2804,
28 and 2698 *et seq.*; Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and

1 Wage Order 7, which sets employment standards for the mercantile industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of this action and continuing to the present, Defendants did (and
4 continue to do) business by supplying various materials for the retail, industrial and construction
5 industries, and employed Plaintiff and other, similarly-situated non-exempt employees within
6 Riverside County and the State of California and, therefore, were (and are) doing business in
7 Riverside County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

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

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

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

members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt “Forklift Driver” (or similar job title) from approximately 2015 until approximately March 3, 2021.

10. During Plaintiff’s employment with Defendants, Plaintiff often worked over 8 hours per workday and/or more than 40 hours per workweek but did not receive overtime compensation equal to one and one-half times his regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff and other non-exempt employees various bonuses and other non-discretionary incentive pay, including but not limited to payments denoted as “Refer Bonus,” “Incent Bns,” “Annl Bonus” and/or other forms of pay that are not excludable from an employee’s “regular rate” of pay (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). However, Defendants failed to properly calculate Plaintiff’s and other non-exempt employees’ regular rates of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

11. Defendants failed to provide Plaintiff and other non-exempt employees with timely, 30-minute meal periods before the end of the fifth hour of work. Specifically, due to work demands Plaintiff was unable to take timely meal periods of at least 30 minutes before the end of the fifth hour of work. Plaintiff was typically scheduled to work from 5:00 a.m. through 1:30 p.m., and although Plaintiff’s meal period was scheduled at 8:45 a.m. – 9:15 a.m., Plaintiff was prevented from taking his meal period at this time due to work demands imposed by Defendants’ supervisors. Plaintiff was often not provided with a first meal period until 11:30 a.m. or later. Defendants also failed to provide Plaintiff or other non-exempt employees with second meal periods on shifts over 10.0 hours. Moreover, upon information and belief, on occasions when Plaintiff and other non-exempt employees were not provided a legally compliant meal period, Defendants failed to always compensate them with the required meal period premiums for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. On those occasions when Defendants did pay Plaintiff and other non-exempt employees a meal period premium, Defendants paid Plaintiff and other non-exempt employees an hour at their *base*

1 rate of pay rather than Plaintiff's and other non-exempt employees' "regular rate" as required
2 under Labor Code § 226.7, in those pay periods when Plaintiff and other non-exempt employees
3 earned Incentive Pay.

4 12. Defendants failed to authorize and permit Plaintiff and other non-exempt
5 employees from taking legally-compliant rest periods for shifts in excess of 3.5 hours as
6 Defendants implemented a policy/practice which failed to authorize and permit employees to take
7 an off-duty rest period of at least 10 minutes for every four hours worked, or major fraction
8 thereof. Upon information and belief, throughout Plaintiff's employment with Defendants,
9 Plaintiff was only authorized and permitted to take one (1) rest period prior to his meal period,
10 and Plaintiff was not authorized and permitted a second rest period during work shifts of at least
11 eight (8) hours in duration. Furthermore, despite occasionally working shifts in excess of ten (10)
12 hours, Defendants failed to authorize and permit Plaintiff a third rest period on shifts in excess of
13 ten (10) hours due to Defendants' rest period policies/practices, which fail to authorize and permit
14 non-exempt employees to take a third rest period on occasions when they worked over ten (10)
15 hours in a workday. On those occasions when Plaintiff and other non-exempt employees were not
16 authorized or permitted to take off-duty rest periods, Plaintiff and other non-exempt employees
17 were entitled to rest period premium payments. However, Defendants failed to pay these rest
18 period premiums. Further, upon information and belief, during at least a portion of the relevant
19 time period, Defendants failed to maintain a payroll code or mechanism for the payment of rest
20 period premiums.

21 13. During the course of Plaintiff's employment with Defendants, as a matter of policy
22 and/or practice, Defendants made, and on information and belief continue to make, unlawful
23 deductions from Plaintiff's and other non-exempt employees' wages for the cost of their uniforms.
24 Although the cost and maintenance of required uniforms is an expense that must be borne by the
25 employer, Defendants have required Plaintiff and other non-exempt employees to wear uniforms
26 and have unlawfully deducted approximately \$7.50 each pay period from Plaintiff's and other
27 non-exempt employees' wages for the costs associated with their uniforms. These deductions are
28 noted as "Uniform" (or similar notation) on employee wage statements.

1 14. As a result of Defendants' failure to pay all earned wages and overtime wages
2 owed, as well as all meal and rest period premium wages owed, Defendants failed to timely pay
3 Plaintiff and other non-exempt employees all wages owed at the time of their respective
4 separations from employment. As a further result of Defendants' failure to pay all earned wages
5 and overtime wages owed and all meal and rest period premium wages owed, Defendants
6 maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage
7 statements.

8 15. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations
9 of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020.
10 Accordingly, the relevant time period for each cause of action pled herein has been calculated to
11 include 178 days preceding the filing of this action.

12 **CLASS ACTION ALLEGATIONS**

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

- 15 a. The Overtime Class consists of all of Defendants' current and former non-exempt
16 employees in California who worked in excess of 8 hours per day and/or 40 hours per
17 workweek and received Incentive Pay during the same pay period, during the four
18 years plus 178 days immediately preceding the filing of this action through the present.
- 19 b. The Meal Period Class consists of all Defendants' current and former non-exempt
20 employees in California who: (i) worked at least one shift in excess of 5.0 hours
21 without a meal period of at least 30 minutes in duration commencing prior to the
22 conclusion of the fifth hour of work as reflected in their timekeeping records, and who
23 do not have a corresponding meal period premium payment made for such shifts;
24 and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal
25 period of at least 30 minutes in duration commencing prior to the conclusion of the
26 tenth hour of work reflected in their timekeeping records, and who do not have a
27 corresponding meal period premium payment made for such shifts; and/or (iii) earned
28 Incentive Pay and were paid one or more meal period premiums during the same pay

period at their base rate of pay, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

d. The Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who had a deduction taken from their wages for the cost of uniforms, during the four years plus 178 days immediately preceding the filing of this action through the present.

e. The Unlawful Deductions Class consists of all of Defendants' current and former employees in California who had a deduction taken from their wages for the cost of their uniforms, during the four years plus 178 days immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Overtime Class, Meal Period Class, Rest Period Class, and/or Unlawful Deduction Class, and who separated their employment with Defendants during the three years plus 178 days immediately preceding the filing of this action through the present.

g. The Wage Statement Class consists of all members of the Overtime Class, Meal Period Class, Rest Period Class, and/or Unlawful Deductions Class, who received a wage statement from Defendants at any time during the one year plus 178 days immediately preceding the filing of this action through the present.

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

18. **Common Questions of Law and Fact Predominate/Well Defined Community**

of Interest: There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants' overtime pay policies resulted in the failure to properly compensate members of the Overtime Class for all overtime hours actually worked;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants paid meal period premiums at the proper rate of pay to members of the Meal Period Class pursuant to Labor Code § 226.7;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants unlawfully deducted wages from members of the Unlawful Deduction Class;
- vi. Whether Defendants failed to reimburse members of the Expense Reimbursement Class for necessary work expenses;
- vii. Whether Defendants provided accurate, itemized wage statements to members of the Wage Statement Class as required under California law; and
- viii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

19. Predominance of Common Questions: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform payroll policies/practices, Defendants' overtime payment policies/practice, Defendants' meal period policies/practices, and Defendants' rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

1 20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitations period applicable to each cause of action pled herein. As alleged herein,
4 Plaintiff, like the members of the Classes, was not paid overtime wages, was not provided all
5 legally compliant meal and rest periods, and was not paid all wages owed at his time of separation
6 from employment.

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

13 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
14 an important public interest in establishing minimum working conditions and standards in
15 California. These laws and labor standards protect the average working employee from
16 exploitation by employers who have the responsibility to follow the laws and who may seek to
17 take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment. The nature of this action and the format of laws available to Plaintiff
19 and members of the Classes make the class action format a particularly efficient and appropriate
20 procedure to redress the violations alleged herein. If each employee were required to file an
21 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
22 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
23 their vastly superior financial and legal resources. Moreover, requiring each member of the
24 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
25 employees who would be disinclined to file an action against their former and/or current employer
26 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
27 employment. Further, the prosecution of separate actions by the individual class members, even
28 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications

1 with respect to the individual class members against Defendants herein; and which would
2 establish potentially incompatible standards of conduct for Defendants; and/or legal
3 determinations with respect to individual class members which would, as a practical matter, be
4 dispositive of the interest of the other class members not parties to adjudications or which would
5 substantially impair or impede the ability of the class members to protect their interests. Further,
6 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
7 individual prosecution considering all of the concomitant costs and expenses attending thereto.
8 As such, the Classes identified in Paragraph 16 are maintainable as a Class under C.C.P. § 382.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

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

13 24. This cause of action is brought pursuant to Labor Code §§ 510, 558, 1194, and
14 1198, which provide that non-exempt employees are entitled to overtime wages of 1 ½ times (or
15 2 times, in the case of double pay) their “regular rate” of pay, and provide a private right of action
16 for the failure to pay all overtime compensation for overtime work performed.

17 25. At all times relevant herein, Defendants were required to properly compensate
18 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
19 hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3
20 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
21 rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work
22 in the workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the
23 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
24 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
25 caused Plaintiff to work overtime hours, but as alleged herein, did not compensate Plaintiff or
26 members of the Overtime Pay Class at one and one half times their “regular rate” for such hours.

27 26. Defendants’ policy/practice of requiring overtime work and not paying at the
28 proper overtime rates for said work violates California Labor Code §§ 204, 210, 510, 558, 1194,

and 1198; and Wage Order 7.

27. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

30. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 7, including interest thereon, statutory penalties, civil penalties, and costs of suit.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

32. Wage Order 7, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

33. As alleged herein, Defendants failed to authorize and permit Plaintiff and members

1 of the Rest Period Class to take all required and legally-compliant rest periods, and failed to pay
2 rest period premium wages when rest periods were not authorized and permitted.

3 34. The foregoing violations create an entitlement to recovery by Plaintiff and
4 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
5 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
6 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

7 **FOURTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

25 38. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
26 Time Class all earned wages upon separation from employment results in a continued payment
27 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
28 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code section

203, plus reasonable attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned and all meal and rest period premiums in violation of Labor Code § 226.

41. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their earned wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

42. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION

(UNLAWFUL DEDUCTIONS FROM WAGES)

(AGAINST ALL DEFENDANTS)

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

44. As alleged above, Defendants made unlawful deductions from Plaintiff's and other non-exempt employees' earned wages for the cost of their uniforms. As a result, Defendants failed to pay all wages owed to Plaintiff and members of the Unlawful Deduction Class, in violation of Labor Code §§ 221-223, which prohibit, among other things, deductions from earned wages except in certain enumerated circumstances not applicable here.

45. Defendants' failure to pay all earned wages is unlawful and creates an entitlement

1 to recovery by Plaintiff and the members of the Unlawful Deduction Class for unpaid wages,
2 interest on said wages, and attorneys' fees pursuant to Labor Code §§ 218.5, 218.6, and Code of
3 Civil Procedure § 1021.5.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **(AGAINST ALL DEFENDANTS)**

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

8 47. Defendants failed to indemnify Plaintiff and other employees for the cost of their
9 uniforms, as alleged herein. Although Plaintiff and members of the Expense Reimbursement
10 Class incurred these expenses in the direct discharge of their job duties, Defendants did not
11 reimburse these employees for such necessary work expenditures during the four years preceding
12 the filing of this lawsuit.

13 48. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
14 states that "an employer shall indemnify his or her employees for all necessary expenditures or
15 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
16 his or obedience to the directions of the employer."

17 49. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
18 states that "any contract or agreement, express or implied, made by any employee to waive the
19 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
20 employee or his personal representative of any right or remedy to which he is entitled under the
21 laws of this State."

22 50. As a proximate result of Defendants' policies and/or practices in violation of Labor
23 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class were damaged in
24 sums, which will be shown according to proof.

25 51. Plaintiff and members of the Expense Reimbursement Class are entitled to
26 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action, and
27 interest pursuant to Labor Code § 2802(b) "at the same rate as judgments in civil actions." Thus,
28 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall

accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

53. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to properly pay all earned and overtime wages, failing to provide all legally compliant meal periods and failing to pay all meal period premiums, failing to authorize and permit all required rest periods, or pay premium payments for missed or non-compliant rest periods, failing to issue accurate itemized wage statements, and failing to pay all wages owed at termination from employment.

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

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

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

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

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

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

59. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 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 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved

employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

d. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

f. Unlawfully deducting earned wages from wages paid to Plaintiff, the Unlawful Deductions Class, and other aggrieved employees in violation of Labor Code §§ 221, 222, 223, 558, and 1198;

g. Failing to reimburse Plaintiff, the Reimbursement Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

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

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

60. On October 6, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 59 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

61. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between April 11, 2020, and the present.

62. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, 558, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action, for recovery of unpaid wages pursuant to Labor Code §§ 221–223;
10. Upon the Seventh Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

1 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
2 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
3 practices declared by this Court to violate Business & Professions Code § 17200 *et seq.*;

4 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
5 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
6 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
7 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
8 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
9 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
10 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial
11 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
12 employee per pay period; and/or (4) \$100.00 for each initial violation and \$200 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for which
14 no civil penalty is specifically provided, based on the Labor Code violations identified in
15 Paragraph 59 (a)-(i);

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

18 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
19 §§ 226, 1194, 2802(c), and 2699(g); and Code of Civil Procedure § 1021.5; and

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

21
22 Dated: December 13, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

23
24 By:



Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

Dated: December 13, 2021

HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff