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County of Santa Barbara
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

ROBERT LEWIS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

IMERYS FILTRATION MINERALS, INC., a
Delaware corporation; IMERYS
PERFORMANCE MINERALS AMERICAS,
INC., a Delaware corporation; and DOES 1
through 100,

Defendants.

Case No. 22CV04874

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM
WAGES (LABOR CODE §§ 558,
1182.12, 1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE § 201-203);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Robert Lewis (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Defendants IMERYS
3 Filtration Minerals, Inc., a Delaware corporation, IMERYS Performance Minerals Americas, Inc.,
4 and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
9 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, Business
10 and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Industrial Welfare
11 Commission Wage Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and
12 restitution. This action is brought pursuant to California Code of Civil Procedure § 382. This
13 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
14 amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

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

22 **PARTIES**

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

1 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
2 1198, and 2698 *et seq.*, Unfair Competition Law, and Wage Order 16, which sets employment
3 standards for certain on-site occupations in the construction, drilling, logging and mining
4 industries.

5 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
6 years preceding the filing of this action and continuing to the present, Defendants did (and
7 continue to do) business within the County of Santa Barbara and the State of California by
8 operating a mining facility and therefore, were (and are) doing business in the County of Santa
9 Barbara and the State of California.

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

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

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

28 8. At all times mentioned herein, Defendants, and each of them, were members of

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

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Defendants operate mines and processing plants in California. Plaintiff was
7 employed by Defendants as a non-exempt employee at Defendants' Lompoc, California location,
8 from approximately October 2019 to February 5, 2020.

9 10. During Plaintiff's employment with Defendants, Defendants maintained an
10 unlawful policy/practice that failed to compensate Plaintiff and other non-exempt employees for
11 all minimum and overtime wages earned for all hours actually worked including, but not limited
12 to, all hours they were subject to the control of Defendants and/or suffered or permitted to work.
13 Specifically, Defendants require Plaintiff and other non-exempt employees to don protective gear
14 and prepare work-related equipment prior to clocking in for their shift, but only paid Plaintiff and
15 other non-exempt employees for their scheduled shift time. This unlawful policy/practice is
16 further evidenced in Defendants collective bargaining agreement, which provides that
17 "[i]ncidental time such as make ready and clothes change is not either straight time worked or
18 overtime worked." As a result, Defendants required Plaintiff and other non-exempt employees to
19 perform work while off-the-clock, and Defendants failed to compensate Plaintiff and other non-
20 exempt employees for all minimum and overtime wages owed.

21 11. Throughout Plaintiff's employment, Defendants also failed to provide Plaintiff
22 and other non-exempt employees with all legally compliant meal periods due to Defendants'
23 unlawful meal period policies/practices that fail to provide timely, duty-free 30-minute meal
24 periods. Specifically, Defendants require Plaintiff and other non-exempt employees to carry a
25 radio at all times, and to respond to any incoming radio calls at all times, even during purported
26 meal periods. This policy fails to relinquish all control over how Plaintiff and other non-exempt
27 employees spend their meal periods, in violation of *Augustus v. ABM Security Services, Inc.*
28 (2016) 2 Cal.5th 257.

1 12. Additionally, Defendants regularly provided Plaintiff and other non-exempt
2 employees with late first meal periods that did not commence prior to the end of their fifth hour
3 of work. Specifically, Defendants' non-exempt employees took staggered meal periods so that at
4 least one employee would remain performing work on Defendants' equipment at all times.
5 However, meal periods were taken based on seniority, with the most senior employees taking
6 meal periods first and the most junior employees being forced to continue working until such time
7 as the senior employees returned from their lunch periods. This regularly resulted in Plaintiff and
8 other non-exempt employees being provided with untimely meal periods commencing after the
9 conclusion of the fifth hour of work. On occasions when Plaintiff and other non-exempt
10 employees worked shifts in excess of 10 and 12 hours, this meal period practice/policy similarly
11 applied to second meal periods, resulting in Plaintiff and other non-exempt employees receiving
12 untimely second meal periods commencing after the conclusion of the tenth hour of work. On
13 occasions when Plaintiff and other non-exempt employees were not provided with all lawful meal
14 periods to which they were entitled, Defendants failed to pay Plaintiff and other non-exempt
15 employees an additional hour of premium pay, as required by Labor Code § 226.7.

16 13. Additionally, Defendants failed to authorize and permit Plaintiff and other non-
17 exempt employees to take all legally-compliant paid rest periods for every 4 hours worked (or
18 major fraction thereof) due to Defendants' unlawful rest period policies/practices. As stated,
19 Defendants require Plaintiff and other non-exempt employees to carry radios and respond to
20 incoming radio calls at all times, including during employees' 10-minute rest periods, in violation
21 of *Augustus v. Security Services, Inc.* (2016) 2 Cal.5th 257, 269 (“[O]ne cannot square the practice
22 of compelling employees to remain at the ready, tethered by time and policy to...communication
23 devices, with the requirement to relieve employees of all work duties and employer control during
24 10-minute rest periods.”). Despite Defendants' failure to authorize and permit Plaintiff and other
25 non-exempt employees to take all legally-compliant rest periods, Defendants failed to provide
26 Plaintiff and other non-exempt employees with an additional hour of premium pay for each
27 workday in which a rest period violation occurred, as required by Labor Code § 226.7.

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1 14. As a result of Defendants' failure to pay all minimum wages, overtime wages, and
2 meal and rest period premium wages owed, Defendants maintained inaccurate payroll records,
3 issued inaccurate wage statements, and failed to pay all final wages owed to Plaintiff and other
4 non-exempt employees upon their respective separations from employment.

5 **CLASS ACTION ALLEGATIONS**

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

8 a. The Minimum Wage Class consists of all of Defendants' current and former non-
9 exempt employees in California who were subject to Defendants' timekeeping
10 policies and/or practices, during the four years immediately preceding November
11 12, 2021 through the present.

12 b. The Overtime Class consists of all of Defendants' current and former non-exempt
13 employees in California who worked more than eight (8) hours per day and/or
14 forty (40) hours per week and were subject to Defendants' timekeeping
15 policies/practices, during the four years immediately preceding November 12,
16 2021 through the present.

17 c. The Meal Period Class consists of all of Defendants' current and former non-
18 exempt employees in California who: (i) worked at least one shift in excess of 5.0
19 hours without their timekeeping records reflecting a meal period of at least 30
20 minutes in duration commencing prior to the conclusion of the fifth hour of work;
21 and/or (ii) worked at least one shift in excess of 10.0 hours without their
22 timekeeping records reflecting a second meal period of at least 30 minutes in
23 duration commencing prior to the conclusion of the tenth hour of work; and/or (iii)
24 worked at least one shift in excess of 5.0 hours and were required to carry a radio
25 on their persons during a recorded meal period, and who did not receive a
26 corresponding meal period premium payment for such shifts, during the four years
27 immediately preceding November 12, 2021 through the present.

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- d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours and were required to carry a radio on their persons, during the four years immediately preceding November 12, 2021 through the present.
- e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding November 12, 2021 through the present.
- f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who have separated their employment with Defendants within the three years preceding November 21, 2021 through the present.

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

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

- i. Whether Defendants paid at least the statutory minimum wage for all hours worked to members of the Minimum Wage Class;
- ii. Whether Defendants properly paid all overtime wages to members of the Overtime Class;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class;

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- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal periods;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class; and
- vii. Whether Defendants timely paid all final wages at the time of separation to members of the Waiting Time Class.

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

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all minimum wages owed, was deprived off all overtime wages owed, was not provided all lawful meal periods, was not authorized and permitted to take all lawful rest periods, did not receive all accurate itemized wage statements, and was not paid all final wages owed at the time of his separation from employment.

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

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 23. Wage Order 16 § 4 and California Labor Code §§ 1197 and 1182.12 establish the
6 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
7 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
8 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
9 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
10 wages and interest accrued thereon.

11 24. At all relevant times herein, Defendants failed to conform their pay practices to
12 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
13 for all hours worked including, but not limited to, all hours they were subject to the control of
14 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
15 Order 16.

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

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

26 27. The foregoing practices and policies are unlawful and create an entitlement to
27 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
28 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and

1 civil penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 558,
2 1194, 1197, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **(AGAINST ALL DEFENDANTS)**

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

7 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
8 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
9 compensation for hours worked, and provide a private right of action for the failure to pay all
10 overtime compensation for overtime work performed.

11 30. At all times relevant herein, Defendants were required to properly compensate
12 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
13 hours worked pursuant to Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires
14 an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of
15 pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the
16 workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the
17 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
18 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
19 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
20 Overtime Class at one and one-half times their regular rate of pay for such hours.

21 31. The foregoing policies and practices alleged herein are unlawful and create
22 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
23 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
24 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
25 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

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

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

33. 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 16, § 10, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

34. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Code of Civil Procedure § 1021.5.

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

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

36. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

37. As alleged herein, and due to their unlawful rest period policies and/or practices, Defendants failed to authorize and permit members of the Rest Period Class to take all lawful rest periods to which they are legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation in accordance with Labor Code § 226.7.

1 38. The foregoing policies and practices are unlawful and create an entitlement to
2 recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount
3 of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
4 costs of suit according to Labor Code §§ 226.7, 516, and 558, and Code of Civil Procedure §
5 1021.5.

6 **FIFTH CAUSE OF ACTION**
7 **WAGE STATEMENT VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

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

10 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
12 and members of the Wage Statement Class with complete and accurate itemized wage statements
13 that included, among other requirements, all hours worked, all overtime and minimum wages
14 earned, gross wages earned, and net wages earned, in violation of Labor Code § 226 *et seq.*

15 41. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
16 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
17 to, among other things, the non-payment of all overtime and minimum wages owed, and deprived
18 Plaintiff and members of the Wage Statement Class of the information necessary to identify the
19 discrepancies in Defendants' reported data.

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

24 **SIXTH CAUSE OF ACTION**
25 **WAITING TIME PENALTIES**
26 **(AGAINST ALL DEFENDANTS)**

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

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1 44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
2 an employer to pay all wages earned immediately at the time of separation of employment in the
3 event the employer discharges the employee, or if the employee provides at least 72 hours of
4 notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her
5 intent to quit, said employee's wages become due and payable no later than 72 hours upon said
6 employee's last date of employment.

7 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
9 at the time of their separation, which includes, among other things, underpaid minimum wages,
10 underpaid overtime wages, and meal and rest period premium wages. Further, Plaintiff is
11 informed and believes, and based thereon alleges, that as a matter of uniform policy and practice,
12 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
13 end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure
14 to pay all final wages was willful within the meaning of Labor Code § 203.

15 46. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
16 Time Class their earned wages upon separation from employment, results in a continued payment
17 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
18 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
19 plus reasonable attorneys' fees and costs of suit.

20 **SEVENTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

22 **(AGAINST ALL DEFENDANTS)**

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

24 48. Defendants have engaged, and continue to engage, in unfair and/or unlawful
25 business practices in California in violation of California Business and Professions Code § 17200
26 et seq., by, amongst other things, failing to pay Plaintiff and the Classes all minimum and overtime
27 wages owed, failing to pay all required meal and rest period premium wages owed, by failing to
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1 issue accurate itemized wage statements, and failing to pay all final wages at the time of separation
2 from employment.

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

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

12 51. The acts complained of herein occurred within the last four years immediately
13 preceding November 12, 2021.

14 52. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect his interests and those of the Classes, to obtain restitution on behalf of the members of the
16 Classes, and to enforce important rights affecting the public interest. Plaintiff has thereby
17 incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under
18 Code of Civil Procedure § 1021.5.

19 **EIGHTH CAUSE OF ACTION**
20 **PRIVATE ATTORNEYS GENERAL ACT**
21 **(AGAINST ALL DEFENDANTS)**

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

23 54. Defendants have committed several Labor Code violations against Plaintiff,
24 members of the Classes, and other aggrieved employees. Plaintiff, as an "aggrieved employee"
25 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
26 employees, brings this representative action against Defendants to recover the civil penalties due
27 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
28 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited

1 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
2 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
3 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
4 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
5 employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent
6 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for
7 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
8 those violations of the Labor Code for which no civil penalty is specifically provided, based on
9 the following Labor Code violations:

- 10 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
11 wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194,
12 1194.2, 1197, and 1198;
- 13 b. Failing to provide meal periods as required by law and failing to pay meal
14 period premiums to Plaintiff and other aggrieved employees at these
15 employees' respective regular rates of compensation for meal period violations
16 in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 17 c. Failing to authorize and permit Plaintiff and other aggrieved employees all
18 lawful rest periods, and failing to pay rest period premiums to Plaintiff and
19 other aggrieved employees at these employees' respective regular rates of
20 compensation for rest period violations in violation of Labor Code §§ 226.7,
21 516, 558, and 1198;
- 22 d. Failing to pay Plaintiff and other aggrieved employees all wages earned at least
23 twice during each calendar month in violation of Labor Code § 204;
- 24 e. Failing to furnish aggrieved employees with accurate and compliant itemized
25 wage statements in violation of Labor Code § 226 *et seq.*;
- 26 f. Failing to timely pay Plaintiff and other aggrieved employees all wages due
27 upon termination in violation of Labor Code §§ 201, 202, and 203;

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g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1174, and 1198; and

h. Failing to respond to Plaintiff and other aggrieved employees' requests to inspect and/or copy employment records in violation of Labor Code § 226.

55. On November 12, 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 54 (a)-(h).

56. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all non-exempt employees who worked for Defendants in California between November 12, 2020 and the present.

57. 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 recover under California Labor Code § 2699.

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 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, 512 and 558;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516 and 558;

3 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code
4 §§ 226 *et seq.*;

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

7 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of California Business and Professions Code §
10 17200 *et seq.*;

11 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
12 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
13 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
14 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
15 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
16 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
17 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial
18 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
19 employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each
20 subsequent violation per employee per pay period for those violations of the Labor Code for
21 which no civil penalty is specifically provided, based on the Labor Code violations identified in
22 Paragraph 54 (a)-(h).

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

25 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
26 §§ 218.5, 1194 *et seq.*, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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1 14. For such other and further relief the Court may deem just and proper.

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3 Dated: December 8, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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7 **DEMAND FOR JURY TRIAL**

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

10 Dated: December 8, 2022

HAINES LAW GROUP, APC

11 By:


Fletcher W. Schmidt
Attorneys for Plaintiff