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

JUAN VIDAL, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

ROYAL WEST DRYWALL, INC., a
California corporation; and DOES 1 through
100,

Defendants.

CASE NO. CVRI2105729

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE FOR
ALL NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802, 2804)**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (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 Juan Vidal (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Defendants Royal West Drywall, Inc., a California Corporation, and DOES 1 to 100,
4 inclusive (collectively “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, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194,
9 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*, and Industrial Welfare Commission Wage Order
10 16 (“Wage Order 16”), in addition to seeking injunctive relief, declaratory relief, and restitution.
11 This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds 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 Riverside County. Defendants own, maintain offices, transact business, have an agent
18 or agents within Riverside County, and/or otherwise are found within Riverside County, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
22 eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident.
23 Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff
24 was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of
25 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
26 been deprived of the rights guaranteed by California Business and Professions Code § 17200 *et.*
27 *seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2802, 2804, 2698 *et seq.*, and Wage Order 16, which sets employment standards for construction

1 industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the
3 applicable statute of limitations for each cause of action pled herein and continuing to the present,
4 Defendants engage in and continue to engage in the business of installing drywall and paint for a
5 variety of residential construction projects and employed Plaintiff and other, similarly-situated
6 non-exempt employees within Riverside County, and the State of California and, therefore, were
7 (and are) doing business in 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 relevant times, each of said Defendants participated in the doing of the acts
19 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
20 and each of them, were the agents, servants, and employees of each and every one of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
22 within the course and scope of said agency and employment. Defendants, and each of them,
23 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions
24 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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants provide services for the installation of drywall and paint for a wide
4 variety of residential projects throughout Southern California. Plaintiff worked for Defendants as
5 a non-exempt “Painter” from approximately December 2019 until September 3, 2021.

6 10. Throughout Plaintiff’s employment with Defendants, Defendants’ timekeeping
7 policies and/or practices resulted in Plaintiff and other non-exempt employees not being
8 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
9 Specifically, Defendants had a policy and/or practice of requiring Plaintiff and other non-exempt
10 employees to record only the scheduled start and end times of their shifts, as opposed to the times
11 they actually worked, despite the fact that Plaintiff and other non-exempt employees regularly
12 began working 10-15 minutes before their scheduled shifts. When Plaintiff tried to record his
13 actual hours worked, his supervisor, Luis Pacheco, made him change his timesheet to reflect only
14 his scheduled hours. As a result of Defendants’ failure to pay Plaintiff and other non-exempt
15 employees for their actual hours worked, Defendants failed to pay Plaintiff and other non-exempt
16 employees for all minimum and overtime wages earned.

17 11. Defendants failed to provide Plaintiff and other non-exempt employees with all
18 legally compliant meal periods due to Defendants’ meal period policies/practices, which have
19 frequently resulted in short (less than 30 minutes) and missed meal periods. Defendants
20 maintained an unlawful meal period policy/practice of combining employee meal and rest periods
21 into one “combined” break of 45 minutes per shift, regardless of employee shift length. As
22 Plaintiff and other non-exempt employees regularly worked over 6 hours in a workday,
23 Defendants were legally required to provide Plaintiff and other non-exempt employees with a
24 meal period of at least 30-minutes and at least two ten-minute rest periods, for a total break time
25 of 50-minutes. Accordingly, Defendants either failed to provide Plaintiff and other non-exempt
26 employees with all legally required meal periods of at least 30-minutes or Defendants failed to
27 permit and authorize Plaintiff and other non-exempt employees with all legally required rest
28 periods. Moreover, as a result of work demands and Defendants’ policy and practice of failing to

1 provide adequate staffing, Plaintiff was often unable to take a single meal period during the
2 entirety of his shift. Despite Defendants' failure to provide Plaintiff and other non-exempt
3 employees with all lawful meal periods to which they were entitled, Defendants failed to provide
4 Plaintiff and other non-exempt employees with an additional hour of premium pay for each
5 workday in which a meal period violation occurred, as required by Labor Code § 226.7. Upon
6 information and belief, Defendants maintained no mechanism for the payment of meal period
7 premium payments as required by Labor Code § 226.7, in the event that a legally-compliant meal
8 period was not provided to their non-exempt employees.

9 12. Plaintiff was also not authorized and permitted to take a rest period for every 4
10 hours worked (or major fraction thereof) due to Defendants' unlawful rest period
11 policies/practices. As discussed above, Plaintiff was not authorized and permitted to take separate
12 rest periods throughout the workday and was only authorized and permitted one 45-minute break
13 during the entirety of his shift, in violation of California law. *See Rodriguez v. E.M.E., Inc.* (2016)
14 246 Cal.App.4th 1027 (holding that in the context of an 8-hour shift with a single meal period,
15 the preferred schedule requires the provision of a rest period in the middle of each "work period"
16 before and after the meal break, and that "a departure from the preferred schedule is permissible
17 only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate
18 a material burden that would be imposed on the employer by implementing the preferred
19 schedule."). Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt
20 employees to take all legally-compliant rest periods, Defendants failed to provide Plaintiff and
21 other non-exempt employees with an additional hour of premium pay for each workday in which
22 a rest period violation occurred, as required by Labor Code § 226.7. Upon information and belief,
23 Defendants maintained no mechanism for the payment of rest period premium payments as
24 required by Labor Code § 226.7, in the event that a legally-compliant rest period was not provided
25 to their non-exempt employees.

26 13. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
27 all reasonable and necessary work expenditures, including, but not limited to, mileage and
28 personal cellular phone expenses. Specifically, Defendants required their non-exempt employees

1 to report directly to different worksites each day, but did not reimburse employees for their
2 mileage incurred. Although, Plaintiff's home was only 40 minutes from Defendants' office in
3 Norco, Defendants' often required Plaintiff to various worksites that were over an hour and a half
4 away without reimbursing Plaintiff for his mileage. Further, Plaintiff and other non-exempt
5 employees were often required to use their personal vehicles to travel to two separate job sites per
6 shift, but were not reimbursed for their mileage incurred in traveling between the different
7 worksites. Additionally, although Defendants required Plaintiff and other non-exempt employees
8 to use their personal cellular phones for work related purposes, including, but not limited to,
9 communicating with supervisors, Defendants failed to reimburse Plaintiff and other non-exempt
10 employees for use of their cellular phones. As a result of Defendants' failure to reimburse Plaintiff
11 and other non-exempt employees for all necessary business expenses incurred, Plaintiff and other
12 non-exempt employees are entitled to reimbursement pursuant to Labor Code § 2802.

13 14. As a result of Defendants' failure to pay all minimum and overtime wages, as well
14 as meal and rest period premium wages, Defendants maintained inaccurate payroll records, and
15 issued inaccurate wage statements to Plaintiff. As a further result of Defendants' failure to pay all
16 minimum and overtime wages, failure to pay all meal and rest period premium wages, and failure
17 to indemnify for all business expenses, Defendants failed to pay all wages owed to Plaintiff and
18 other non-exempt employees at the time of their separation from employment.

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

23 **CLASS ACTION ALLEGATIONS**

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

- 26 a. The Minimum Wage Class consists of all of Defendants' current and former non-
27 exempt employees in California who were subject to Defendants' timekeeping
28 policies and/or practices, during the four years and 178 days immediately

preceding the filing of this action through the present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and were subject to Defendants' timekeeping policies and/or practices, during the four years and 178 days immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years and 178 days immediately preceding the filing of this action through the present.

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, during the four years and 178 days immediately preceding the filing of this action through the present.

e. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who were not reimbursed for necessary business expenses incurred, during the four years and 178 days immediately preceding the filing of this action through the present.

f. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the Minimum Wage Class, Overtime Class, Rest Period Class, Meal Period Class, and/or Employee Expense Class during the three years and 178 days immediately preceding the filing of the Complaint through the present.

g. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, during the one year and 178 days immediately preceding the filing of the Complaint 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

and Subclasses 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 paid at least the 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 pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods;
- vi. Whether Defendants' reimbursement policies, and failure to reimburse Plaintiff and members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties, comply with Labor Code § 2802;
- vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- viii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual class member, including but not limited to
3 Defendants' timekeeping policies/practices, and meal and rest period policies/practices. As such,
4 the common questions predominate over individual questions concerning each individual class
5 member's showing as to their eligibility for recovery or as to the amount of their damages.

6 20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
7 Plaintiff was employed by Defendants as a non-exempt employee in California during the
8 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
9 herein, Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages
10 owed due to Defendants' timekeeping policies/practices, was not provided all required meal
11 periods, was not authorized and permitted all rest periods, did not receive premium pay for non-
12 compliant meal and rest periods, was not reimbursed for all business expenses owed, was not paid
13 all wages owed at termination of employment, and was not provided with accurate, compliant,
14 itemized wage statements.

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

21 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
22 an important public interest in establishing minimum working conditions and standards in
23 California. These laws and labor standards protect the average working employee from
24 exploitation by employers who have the responsibility to follow the laws and who may seek to
25 take advantage of superior economic and bargaining power in setting onerous terms and
26 conditions of employment. The nature of this action and the format of laws available to Plaintiff
27 and members of the Classes make the class action format a particularly efficient and appropriate
28 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 Class(es) 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 interest 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 Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

24. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the

1 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
2 subject to the control of Defendants and/or suffered or permitted to work under the California
3 Labor Code and Wage Order 16.

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

9 26. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
10 members of the Minimum Wage Class seek penalties pursuant to Wage Order 16 § 18(A) and
11 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
12 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;
13 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages
14 and/or penalties pursuant to California Labor Code § 558(a).

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

19 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
20 1198, which provide that non-exempt employees are entitled to all overtime wages and
21 compensation for all overtime hours worked and provide a private right of action for the failure
22 to pay all overtime compensation for overtime work performed.

23 29. At all times relevant herein, Defendants were required to properly compensate
24 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
25 hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, §
26 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular
27 rate of pay" for all overtime hours work. Defendants caused Plaintiff and members of the
28 Overtime Class to work overtime hours, but failed to credit these employees with all overtime

1 hours actually worked.

2 30. The foregoing policies and practices are unlawful and create entitlement to
3 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of
4 overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
5 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198;
6 Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

7 **THIRD CAUSE OF ACTION**

8 **MEAL PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

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

11 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed in their affirmative obligation to provide all of their non-exempt employees in California,
13 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
14 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
15 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
16 of the Meal Period Class at their respective regular rates of compensation, in accordance with
17 California Labor Code §§ 204, 210, 226.7, and 512.

18 33. As a result, Defendants are responsible for paying premium compensation for meal
19 period violations including interest thereon, statutory penalties, civil penalties, and costs of suit,
20 pursuant to Labor Code §§ 226.7, 512, 558, Wage Order 16, and Civil Code §§ 3287(b) and 3289.

21 **FOURTH CAUSE OF ACTION**

22 **REST PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 35. Wage Order 16, § 11 and California Labor Code §§ 226.7, 516 and 558 establish
26 the right of employees to be provided with a rest period of at least ten (10) minutes for each four
27 (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and
28 permit Plaintiff and members of the Rest Period Class to take all legally complaint rest periods as

1 alleged herein, Defendants did not pay these individuals an additional hour of pay at their
2 respective regular rate for the rest periods that they failed to authorize and permit them to take, as
3 required by Labor Code § 226.7.

4 36. Defendants' policies and practices described herein are unlawful and create an
5 entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the
6 unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
7 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
8 516, 558, Wage Order 16, and Civil Code §§ 3287(b) and 3289.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **(AGAINST ALL DEFENDANTS)**

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

13 38. 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 her obedience to the directions of the employer."

17 39. 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 40. Due to Defendants' unlawful policy and practice of requiring employees to use
23 their personal vehicles and/or personal cellular phones for work purposes, and failing to pay
24 reimbursements to Plaintiff and members of the Employee Expense Class, Defendants have
25 violated Labor Code §2802.

26 41. As a proximate result of Defendants' policies and/or practices in violation of Labor
27 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages
28 in sums, which will be shown according to proof.

42. Plaintiff and members of the Employee Expense Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

43. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

45. This cause of action is brought pursuant to Cal. Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including unpaid minimum and overtime wages, unpaid meal and rest period premium wages as well as unreimbursed business expenses.

47. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Cal. Labor Code §§ 201-203.

48. Defendants' failure to pay all final wages was willful within the meaning of Cal. Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due.

49. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

WAGE STATEMENT PENALITIES

(AGAINST ALL DEFENDANTS)

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

51. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements in violation of Labor Code § 226 *et seq.*

52. Defendants' failures in furnishing Plaintiff and Wage Statement Class members with complete and accurate itemized wage statements resulted in injury, as said failures deprived them of the information necessary to identify the discrepancies in Defendants' reported data, and deprived them of the information required to be included under Labor Code § 226(a).

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

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

55. 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: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages owed; (b) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, and failing to pay them meal period premium payments; (d) failing to

1 authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they
2 are entitled, and failing to pay them rest period premium payments; (e) failure to reimburse all
3 business expenses to members of the Employee Expense Class; (f) failing to issue accurate and
4 itemized wage statements to the Wage Statement Class; and (g) failing to pay Plaintiff and
5 members of the Waiting Time Class all wages due at separation of employment.

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

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

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

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

22 **NINTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **(AGAINST ALL DEFENDANTS)**

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

26 61. Defendants have committed several Labor Code violations against Plaintiff,
27 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
28 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved

employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees of all legally required meal periods and failing to pay meal period premiums at the employees respective regular rates of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees all legally required rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses in violation of Labor Code §§ 2802 and 2804;

- 1 f. Failing to compensate Plaintiff and similarly aggrieved employees with all
2 earnings at their separation of employment in violation of Labor Code §§ 201-
3 203;
- 4 g. Failing to furnish accurate itemized wage statements to Plaintiff and other
5 aggrieved employees, in violation of Labor Code § 226;
- 6 h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
7 twice each calendar month in violation of Labor Code § 204; and
- 8 i. Failing to maintain accurate records on behalf of Plaintiff and aggrieved
9 employees in violation of Labor Code §§ 1174, 1198, and 1199.

10 62. On December 22, 2021 Plaintiff notified Defendants via certified mail and notified
11 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
12 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
13 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
14 California Labor Code identified in Paragraph 61 (a)-(i). Now that sixty-five days have passed
15 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
16 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
17 administrative requirements for bringing a claim under the Private Attorneys General Act with
18 respect to these violations.

19 63. Based on the foregoing, Plaintiff seeks to represent himself, the State of California,
20 and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and
21 former non-exempt employees who worked for Defendants in California between the one year
22 and 178 days prior to the submission of Plaintiff’s PAGA notice to the present.

23 64. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect his interest and the interests of other aggrieved employees, and to assess and collect the
25 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
26 he is entitled to recover under California Labor Code § 2699.

27 **PRAYER**

28 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf

1 this suit is brought against Defendants, as follows:

- 2 1. For an order certifying the proposed Classes;
- 3 2. For an order appointing Plaintiff as representative of the Classes;
- 4 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 5 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
6 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
7 1197;
- 8 5. Upon the Second Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 10 6. Upon the Third Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 12 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
13 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 14 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 16 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
17 Labor Code §§ 201-203;
- 18 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
19 § 226;
- 20 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
21 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
22 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
23 *seq.*;
- 24 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
25 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
26 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
27 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
28 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus

25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections identified in Paragraph 61 (a)-(i) above.

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

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

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

Dated: February 25, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: February 25, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff