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County of Yolo,
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By: W. Van Dam, Deputy

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

MICHAEL EMMENS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

HUMANO LLC, a California limited liability
company; and DOES 1 through 100,
Defendants.

Case No.: CV2021-2225

**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);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Michael Emmens (hereinafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Humano LLC, a California limited liability company; 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 Cal. Business & Professions Code
8 § 17200 *et. seq.*, Cal. Labor Code §§ 201-204, 201.3, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194,
9 1198, 2698 *et, seq.*, and Industrial Welfare Commission Wage Order 4 (“Wage Order 4”), in
10 addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to Cal.
11 Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the
12 California Labor Code because the amount in controversy exceeds this Court’s jurisdictional
13 minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Cal. Labor
27 Code §§ 201-204, 201.3, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1198, 2698 *et, seq.*, Cal.
28 Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 4,

1 which sets employment standards for professional, technical, clerical, mechanical and similar
2 occupations.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and
5 continue to do) business as a temporary services employer that supplies workers to warehouses
6 and distribution centers, and employed Plaintiff and other, similarly-situated non-exempt
7 employees within the state of California and Yolo County and, therefore, were (and are) doing
8 business in the State of California and Yolo County.

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

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

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

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants are a temporary services employer that supplies employees to
5 warehouses and distribution facilities. Plaintiff was employed by Defendants as a non-exempt
6 employee from approximately April 2021 until approximately September 2021. His most recent
7 assignment with Defendants was at a distribution center in West Sacramento, California.

8 10. During Plaintiff's employment with Defendants, Plaintiff often worked in excess
9 of eight hours per workday and/or forty hours per workweek, but he did not receive overtime
10 compensation equal to one and one-half times his "regular rate" of pay for all overtime hours
11 worked. Specifically, Plaintiff and other non-exempt employees received non-discretionary
12 payments such as attendance bonuses, performance incentive payments, per diem payments, and
13 other forms of pay that cannot legally be excluded from the regular rate of pay (hereinafter
14 "Incentive Pay"). However, Defendants failed to incorporate Incentive Pay in employees'
15 "regular rate" of pay when calculating overtime, and instead paid overtime at one-and-one-half
16 times employees' base rates of pay (and double-time at two times employees' base rate of pay).
17 As a result of Defendants' failure to incorporate Incentive Pay into Plaintiff's and other non-
18 exempt employees' "regular rate" of pay, Defendants underpaid overtime and double-time wages
19 to Plaintiff and other non-exempt employees.

20 11. Plaintiff and other non-exempt employees also were not provided by Defendants
21 with legally compliant meal periods due to Defendants' meal period policies/practices, which
22 have frequently resulted in late (commencing after the fifth hour of work), short (less than 30
23 minutes), and missed meal periods. In addition, Defendants failed to provide Plaintiff or other
24 non-exempt employees with second meal periods on shifts over 10.0 hours. Moreover,
25 Defendants failed to allow Plaintiff and other non-exempt employees to leave the work premises,
26 thereby failing to relieve employees of all duties during meal periods. *See Brinker Restaurant*
27 *Corp. v. Superior Court*, 53 Cal.4th 1004, 1036 (2012) (agreeing with DLSE position that
28 employees must be allowed to leave premises during meal periods). On those occasions when

1 Plaintiff was not provided with all legally-required meal periods to which he was entitled,
2 Defendants failed to compensate Plaintiff with the required meal period premium for each
3 workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.
4 Upon information and belief, during at least a portion of the putative class period, Defendants
5 maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

6 12. Defendants have also failed to authorize and permit all required rest periods for
7 Plaintiff and other non-exempt employees. Specifically, Defendants have often failed to authorize
8 and permit a net 10-minute rest period for every four hours worked or major fraction thereof, and
9 Plaintiff and other employees often have had to take short (less than 10 minutes) rest periods, due
10 to their workload. Additionally, Defendants required Plaintiff and other non-exempt employees
11 to remain on the work premises during rest periods, and thereby failed to relinquish all control
12 over employees during rest periods. Despite failing to authorize and permit Plaintiff and other
13 non-exempt employees to take all rest periods to which they are entitled, upon information and
14 belief, during at least a portion of the relevant time period, Defendants maintained no mechanism
15 for the payment of rest period premium payments as required by Labor Code section 226.7 and
16 did not pay Plaintiff or other non-exempt employees any rest period premiums.

17 13. Although Defendants are a temporary services employer as that term is defined in
18 Labor Code § 201.3, Defendants have failed to pay Plaintiff and other non-exempt employees
19 weekly as required by Labor Code § 201.3(b). Instead, Defendants paid Plaintiff paid bi-weekly.

20 14. As a result of Defendants' failure to pay all overtime wages, failure to provide all
21 required meal periods and pay all required meal period premiums, and failure to authorize and
22 permit all required rest periods and pay all required rest period premiums, Defendants maintained
23 inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

24 15. As a further result of Defendants' failure to pay all overtime wages, as well as
25 meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon
26 his separation of employment from Defendants.

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1 **CLASS ACTION ALLEGATIONS**

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

4 a. The Overtime Class consists of all of Defendants' current and former non-exempt
5 employees in California who worked more than eight hours per day and/or forty
6 hours per week and received and/or earned Incentive Pay during a corresponding
7 time period that overtime hours were worked, at any time from four years
8 immediately preceding the filing of this lawsuit through the present.

9 b. The Meal Period Class consists of all of Defendants' current and former non-
10 exempt employees in California who worked at least one shift in excess of 5.0
11 hours and/or worked at least one shift in excess of 10.0 hours, at any time from
12 four years immediately preceding the filing of this lawsuit through the present.

13 c. The Rest Period Class consists of all Defendants' current and former non-exempt
14 employees in California who worked at least one shift of 3.5 hours or more at any
15 time from four years immediately preceding the filing of the Complaint through
16 the present.

17 d. The Wage Statement Class consists of all members of the Overtime Class, Meal
18 Period Class, and/or Rest Period Class, who received a wage statement at any time
19 from one year immediately preceding the filing of this lawsuit through the present.

20 e. The Waiting Time Class consists of all formerly employed members of the
21 Overtime Class, Meal Period Class, and/or Rest Period Class, who separated their
22 employment from Defendants at any time from three years immediately preceding
23 the filing of this lawsuit to the present.

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

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

- 5 i. Whether Defendants failed to properly include all forms of compensation when
6 computing the respective “regular rate” for members of the Overtime Class;
- 7 ii. Whether Defendants provided all legally compliant meal periods to members of
8 the Meal Period Class pursuant to Cal. Labor Code §§ 226.7 and 512;
- 9 iii. Whether Defendants authorized and permitted all legally compliant rest periods to
10 members of the Rest Period Class pursuant to Cal. Labor Code §§ 226.7 and 516;
- 11 iv. Whether Defendants furnished legally compliant wage statements to members of
12 the Wage Statement Class pursuant to Cal. Labor Code § 226; and
- 13 v. Whether Defendants’ policies and/or practices for the timing and amount of
14 payment of final wages to members of the Waiting Time Class at the time of their
15 separation of employment were lawful.

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

23 **20. Typicality:** Plaintiff’s claims are typical of the Classes’ claims because Plaintiff
24 was employed by Defendants as a non-exempt employee in California during the statute(s) of
25 limitations period applicable to each cause of action pled herein. As alleged herein, Plaintiff, like
26 the members of the Classes, was deprived of overtime wages, was not provided all required meal
27 and rest periods, was not provided legally compliant wage statements, and did not receive all final
28 wages owed to him upon his separation of employment with Defendants.

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

7 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interests of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 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 in Paragraph 16 are maintainable as a Class under § 382 of the California Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

25. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to Cal. Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

26. Defendants’ policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates Cal. Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 4.

27. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and Overtime Class members in a civil action for the unpaid amount of overtime wages, interest, penalties, civil penalties, attorney fees, and costs of suit per Labor Code §§ 204, 210, 216, 218.6, 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 4, § 11. Despite Defendants' violations, Defendants did not provide an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with Cal. Labor Code §§ 204, 210, 226.7, and 512 and Wage Order 4, § 11.

30. As a result, Defendants owe premium wages for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Cal. Civil Code §§ 3287(b) and 3289, and Wage Order 4.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

32. Wage Order 4, § 12 and Cal. 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.

33. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

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

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FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

36. 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 with respect to their actual total gross wages earned, total net wages earned, and the legal entity that is the employer, in violation of Cal. Labor Code § 226 *et seq.*

37. Defendants' failures in furnishing 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 earned overtime wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

38. 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 Cal. Labor Code § 226 *et seq.*, including statutory penalties, reasonable attorneys' fees, and costs of suit according to Cal. Labor Code § 226 *et seq.*

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

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

40. 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.

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41. 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 overtime wages as well as unpaid meal and rest period premium wages.

42. 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.

43. 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.

44. 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.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

46. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of Cal. Business & Professions Code § 17200 *et seq.*, by failing to properly pay all overtime wages, by failing to provide all required meal and rest periods and failing to pay premium wages for non-compliant meal and rest periods, failing to issue accurate itemized wage statements to their employees, and failing to pay all final wages owed to employees upon their separation from employment with Defendants.

47. 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 employed, and/or are currently employing, workers and

attempting to do so in honest compliance with applicable wage and hour laws, including the Labor Code and Wage Order sections cited herein.

48. 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.

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

50. 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 Cal. Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

52. 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 \$200.00 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 compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide Plaintiff and other aggrieved employees 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;
- c. Failing to authorize and permit Plaintiff and other aggrieved employees their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to pay Plaintiff and other aggrieved employees on a weekly basis, in violation of Labor Code § 201.3;
- e. Failing to furnish accurate itemized wage statements to Plaintiff and other aggrieved employees, in violation of Labor Code § 226;
- f. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at their separation of employment, in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice each calendar month, in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code § 1174, 1198, and 1199.

53. On or about December 21, 2021, Plaintiff notified Defendants via certified mail and 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 52 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying 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.

54. Based on the foregoing, Plaintiff seeks to represent himself, the State of California, 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 at any time from one year prior to the submission of Plaintiff's PAGA notice to the present.

55. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interest 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 compensatory, consequential, general and special damages according to proof pursuant to Cal. 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 Cal. Labor Code §§ 226.7, 512, and 558;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Cal. Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Cal. Labor Code § 226;

1 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
2 Cal. Labor Code §203;

3 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
4 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
5 practices declared by this Court to be in violation of Cal. Business & Professions Code § 17200
6 *et seq.*;

7 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
8 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
9 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
10 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
11 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
12 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
13 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
14 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
15 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
16 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
17 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
18 period for those violations of the Labor Code for which no civil penalty is specifically provided,
19 based on the violations of Labor Code sections identified in Paragraph 52 (a)-(g) above.

20 11. Prejudgment interest on all due and unpaid wages and premium wages pursuant to
21 Cal. Labor Code § 218.6 and Cal. Civil Code §§ 3287 and 3289;

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

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

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3 Dated: February 25, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

4 By: _____

5 Paul K. Haines
6 Attorneys for Plaintiff

7 **DEMAND FOR JURY TRIAL**

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

9
10 Dated: February 25, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

11 By: _____

12 Paul K. Haines
13 Attorneys for Plaintiff