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FILED
Superior Court of California
County of Los Angeles
03/21/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: D. Tamayo Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERARDO SANCHEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

DUTTON HOME SERVICES, LLC, a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22STCV01834

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

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

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

4 DEMAND FOR JURY TRIAL
5 UNLIMITED CIVIL CASE

6 Plaintiff Gerardo Sanchez (“Plaintiff”) on behalf of himself and all others similarly
7 situated, hereby brings this First Amended Class and Representative Action Complaint against
8 Defendants Dutton Home Services, LLC, a California corporation, and DOES 1 to 100, inclusive
(collectively “Defendants”), and on information and belief alleges as follows:

9 **JURISDICTION**

10 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
11 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
12 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and
13 2804, Business and Professions Code § 17200 *et. seq.*, and Industrial Welfare Commission Wage
14 Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This action
15 is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
16 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
17 this Court's jurisdictional minimum.

18 **VENUE**

19 2. Venue is proper in this judicial district pursuant to California Code of Civil
20 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
21 occurred in the County of Los Angeles. Defendants transact business within the County of Los
22 Angeles and/or otherwise are found within the County of Los Angeles, and Defendants are within
23 the jurisdiction of this Court for purposes of service of process.

24 **PARTIES**

25 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
26 Plaintiff was and currently is, a California resident living within Los Angeles County. During the
27 four years immediately preceding the filing of this action and within the statute of limitations
28 periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as

1 a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
2 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
3 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
4 1198, 2698 *et seq.* 2802, and 2804, California Business and Professions Code § 17200 *et seq.*
5 ("Unfair Competition Law"), and Wage Order 16, which sets employment standards for the
6 construction, drilling, logging and, mining Industries, including plumbing repair work.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing this action and continuing to the present, Defendants did (and continue
9 to do) business within the County of Los Angeles and the State of California by operating a
10 plumbing repair service company and therefore, were (and are) doing business in the County of
11 Los Angeles and the State of California.

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

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

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

omissions complained of herein.

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

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a plumbing repair service in Los Angeles, California. Plaintiff was employed by Defendants as a non-exempt “Plumber” from approximately February 2019 to March 2021. Plaintiff’s primary job duties consisted of traveling to client homes to conduct repairs, installations, and maintenance on residential plumbing.

10. During Plaintiff’s employment with Defendants, Plaintiff routinely worked in excess of 8 hours per workday and/or more than 40 hours per workweek but did not receive overtime compensation equal to one and one-half times his regular rate of pay for working overtime hours. Specifically, Plaintiff and other non-exempt employees earned commissions (denoted on paystubs as “Performanc”), non-discretionary bonuses (denoted on paystubs as “BONUS” and “CASH BO”), and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law (hereinafter “Incentive Pay”). As a result of paying Plaintiff and other non-exempt employees Incentive Pay, Defendants failed to properly calculate the regular rate of pay, resulting in unpaid overtime wages.

11. Defendants also failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Defendants mandated that non-exempt employees, including Plaintiff, clock out for a meal period prior to the end of the fifth hour of work, regardless of whether they were actually provided with a meal period. As a result, employees were forced to clock out but continue working, and eat their lunch later while driving or forego lunch altogether. As a result, Plaintiff and other non-exempt employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

1 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
2 all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices
3 that failed to provide timely, duty-free 30-minute first meal periods commencing before the end
4 of the fifth hour of work and a second duty-free, 30-minute meal period when they worked shifts
5 in excess of 10.0 hours. As discussed above, Defendants explicitly instructed Plaintiff to clock in
6 and out for his meal periods on their timekeeping system, a cellular phone application named
7 "Paylocity." Defendants required Plaintiff to mark a meal period on the "Paylocity" application
8 even when Defendants did not provide Plaintiff with a lawful meal period. For example, Plaintiff
9 was required to report to work at 7:30am three days a week and 7:15am twice a week, and
10 routinely worked 10-to-12-hour days, but would typically be forced to eat his lunch in 10 to 20
11 minutes where he could find it in his schedule, often while driving between assignments.
12 Defendants did not permit Plaintiff to take a meal period when he was in a client's home and
13 routinely dispatched Plaintiff to client homes at any time, including during Plaintiff's meal
14 periods. Defendants also instructed Plaintiff that his time spent traveling to, from, and between
15 clients counted as his meal period. Defendants' policy/practice often resulted in Plaintiff and other
16 non-exempt employees unable to take their meal periods before the commencement of the fifth
17 hour of work, often missing their meal period altogether, and failed to provide Plaintiff and other
18 non-exempt employees with a second duty-free, 30-minute meal period when they worked shifts
19 in excess of 10.0 hours. On occasions when Plaintiff and other non-exempt employees were not
20 provided with all lawful meal periods to which they were entitled, Defendants failed to pay
21 Plaintiff and other non-exempt employees an additional hour of premium pay at their respective
22 regular rates of pay for each workday in which a meal period violation occurred, as required by
23 Labor Code § 226.7.

24 13. Defendants failed to authorize and permit Plaintiff and other non-exempt
25 employees to take any duty-free 10-minute rest periods for every four hours worked, or major
26 fraction thereof, due to Defendants' unlawful rest period policies/practices. Defendants failed to
27 authorize and permit Plaintiff and other non-exempt employees to take any rest periods
28 whatsoever. Furthermore, Defendants failed to compensate Plaintiff and other non-exempt

employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

14. Upon information and belief, during at least a portion of the relevant time period, Defendants failed to maintain pay codes for the payment of meal and rest period premium payments as required by Labor Code § 226.7.

15. During their respective employments with Defendants, Plaintiff and other non-exempt employees were required to use their personal cell phones for work, as supervisors would frequently call them on their personal cell phones for work-related communications, employees needed the navigation functions to navigate to various assignment locations, and employees were required to use personal cell phones for daily timekeeping. Despite this, Defendants failed to reimburse Plaintiff and other non-exempt employees for all necessary business expenses associated with using their personal cell phones in violation of Labor Code § 2802.

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

CLASS ACTION ALLEGATIONS

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

- a. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per workweek and: (i) received Incentive Pay during a corresponding time period; and/or (ii) were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- b. The Minimum Wage Class consists of all Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping

1 policies and/or practices during the four years immediately preceding the filing of
2 the Complaint through the present.

3 c. The Meal Period Class consists of all Defendants' current and former non-exempt
4 employees in California who: (i) worked at least one shift in excess of 5.0 hours
5 during the four years immediately preceding the filing of this action through the
6 present.

7 d. The Rest Period Class consists of all Defendants' current and former non-exempt
8 employees in California who worked at least one shift in excess of 3.5 hours,
9 during the four years immediately preceding the filing of this action through the
10 present.

11 e. The Reimbursement Class consists of all of Defendants' current and former non-
12 exempt employees in California who were required to use a personal cellular
13 phone for work-related purposes during the four years immediately preceding the
14 filing of this action through the present.

15 f. The Wage Statement Class consists of all members of the Overtime Class,
16 Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received
17 a wage statement from Defendants, during the one year immediately preceding the
18 filing of this action through the present.

19 g. The Waiting Time Class consists of all members of the Overtime Class, Minimum
20 Wage Class, Meal Period Class, and/or Rest Period Class who separated their
21 employment with Defendants during the three years immediately preceding the
22 filing of this action through the present.

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

1 **19. 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 non-exempt employees, which predominate over questions affecting only individual
4 members including, without limitation:

- 5 i. Whether Defendants lawfully paid premium wages for all overtime hours worked
6 to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194
7 and 1198;
- 8 ii. Whether Defendants lawfully paid all minimum wages for all hours worked to
9 members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194,
10 1194.2 and 1197;
- 11 iii. Whether Defendants provided all legally compliant meal periods to members of
12 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 13 iv. Whether Defendants authorized and permitted all lawful rest periods to members
14 of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 15 v. Whether Defendants correctly paid meal and/or rest period premium payments for
16 non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- 17 vi. Whether Defendants failed to reimburse members of the Reimbursement Class for
18 all necessary business expenses incurred pursuant to Labor Code §§ 2802 and
19 2804;
- 20 vii. Whether Defendants furnished legally compliant wage statements to members of
21 the Wage Statement Class pursuant to Labor Code § 226; and
- 22 viii. Whether Defendants paid all wages/compensation due upon separation to
23 members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

24 **20. Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual members of the Classes. The common
26 questions of law set forth above are numerous and substantial and stem from Defendants' policies
27 and/or practices applicable to each individual class member, such as Defendants' uniform
28 overtime and minimum wage policies/practices, meal and rest period policies/practices, and

1 reimbursement policies/practices. As such, common questions predominate over individual
2 questions concerning each individual class member's showing as to their eligibility for recovery
3 or as to the amount of their damages.

4 21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the
6 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
7 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum
8 wages owed, was not provided all required meal periods, was not authorized and permitted to
9 take all required rest periods, was not reimbursed for his necessary business expenses incurred,
10 was not provided with accurate, itemized wage statements, and did not receive all final wages
11 owed at the time of his separation from employment.

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

18 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
19 an important public interest in establishing minimum working conditions and standards in
20 California. These laws and labor standards protect the average working employee from
21 exploitation by employers who have the responsibility to follow the laws and who may seek to
22 take advantage of superior economic and bargaining power in setting onerous terms and
23 conditions of employment. The nature of this action and the format of laws available to Plaintiff
24 and members of the Classes make the class action format a particularly efficient and appropriate
25 procedure to redress the violations alleged herein. If each employee were required to file an
26 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
27 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
28 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.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

26. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

27. At all times relevant herein, Defendants caused Plaintiff and members of the

Overtime Class 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.

28. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

30. 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.

31. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to all hours they were subject to Defendants' control. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated for all hours actually worked as required by the California Labor Code and Wage Order 16.

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

33. As a direct and proximate result of Defendants' unlawful conduct as alleged

1 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including, but
2 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
3 entitled to recover economic and statutory damages and penalties and other appropriate relief as
4 a result of Defendants' violations of the California Labor Code and Wage Order 16.

5 34. Defendants' timekeeping policies/practices are unlawful and create an entitlement
6 to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid
7 amount of minimum wages, liquidated damages, including interest thereon, statutory penalties,
8 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210,
9 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

10 **THIRD CAUSE OF ACTION**

11 **MEAL PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

14 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 failed in their affirmative obligation to provide all of their non-exempt employees in California,
16 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
17 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10, for the
18 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
19 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
20 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
21 California Labor Code §§ 226.7 and 512.

22 37. As a result, Defendants are responsible for paying premium compensation for meal
23 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
24 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Code of Civil Procedure
25 § 1021.5.

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1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

8 40. As alleged herein, and due to Defendants' unlawful rest period policies and/or
9 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
10 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
11 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
12 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
13 California Labor Code § 226.7.

14 41. The foregoing violations create an entitlement to recovery by Plaintiff and
15 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
16 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
17 to Labor Code §§ 226.7, 516, and 558, Wage Order 16, and Code of Civil Procedure § 1021.5.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

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

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

26 44. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
27 states that "any contract or agreement, express or implied, made by any employee to waive the
28 benefits of this article or any part thereof, is null and void, and this article shall not deprive any

1 employee or his personal representative of any right or remedy to which he is entitled under the
2 laws of this State.”

3 45. As alleged herein, due to Defendants’ unlawful reimbursement practices,
4 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
5 necessary business expenses incurred, including cell phone usage.

6 46. As a proximate result of Defendants’ policies and/or practices in violation of Labor
7 Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to
8 damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to
9 proof at trial, pursuant to Labor Code § 2802.

10 **SIXTH CAUSE OF ACTION**

11 **WAGE STATEMENT VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

14 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
16 and members of the Wage Statement Class with complete and accurate itemized wage statements
17 that included, among other requirements, all overtime and minimum wages earned, and all meal
18 and rest period premium wages owed, in violation of Labor Code § 226 *et seq.*

19 49. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class
20 with complete and accurate, itemized wage statements resulted in actual injury, as said failures
21 led to, among other things, the non-payment of all overtime and minimum wages owed and all
22 meal and rest period premium wages owed, and deprived them of the information necessary to
23 identify the discrepancies in Defendants’ reported data.

24 50. Defendants’ failures create an entitlement to recovery by Plaintiff and members of
25 the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code
26 § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys’ fees, and costs
27 of suit according to California Labor Code § 226 *et seq.*

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

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

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

53. 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 the time of their separation including, among other things, underpaid overtime wages owed, and meal and rest period premium wages. 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 members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

56. Defendants have engaged, and continue to engage, in unfair and/or unlawful

1 business practices in California in violation of California Business and Professions Code § 17200
2 *et seq.*, by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
3 wages owed, failing to pay all required meal and rest period premium wages owed, failing to
4 reimburse for all necessary business expenses incurred, knowingly failing to furnish complete and
5 accurate itemized wage statements, and failing to pay all final wages at the time of separation
6 from employment.

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

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

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

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

23 **NINTH CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **(AGAINST ALL DEFENDANTS)**

26 61. Plaintiff re-alleges and incorporates by references all previous paragraphs.

27 62. Defendants have committed several Labor Code violations against Plaintiff,
28 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"

1 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
2 employees, brings this representative action against Defendants to recover the civil penalties due
3 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
4 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
5 to: (1) \$100.00 for each initial violation for each failure to pay each employee pursuant to Labor
6 Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation pursuant
7 to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation pursuant
8 to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation
9 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
10 violation per employee per pay period for those violations of the Labor Code for which no civil
11 penalty is specifically provided, based on the following Labor Code violations:

- 12 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
13 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 14 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
15 wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194,
16 1194.2, 1197, and 1198;
- 17 c. Failing to provide meal periods as required by law and failing to pay meal period
18 premiums to Plaintiff and other aggrieved employees at their respective regular
19 rates of compensation for meal period violations in violation of Labor Code
20 §§ 226.7, 512, 558, and 1198;
- 21 d. Failing to authorize and permit all lawful rest periods and failing to pay rest period
22 premiums to Plaintiff and other aggrieved employees at their respective regular
23 rates of compensation for rest period violations in violation of Labor Code
24 §§ 226.7, 516, 558, and 1198;
- 25 e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related
26 expenses they incurred in violation of Labor Code §§ 2802 and 2804;
- 27 f. Failing to furnish Plaintiff and other aggrieved employees with accurate and
28 compliant itemized wage statements in violation of Labor Code § 226;

- 1 g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees
2 in violation of Labor Code §§ 201-203;
- 3 h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least
4 twice during each calendar month in violation of Labor Code § 204; and
- 5 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
6 employees in violation of Labor Code §§ 558 and 1174.

7 63. On January 14, 2022, Plaintiff notified Defendants, via certified mail, and the
8 California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’
9 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
10 under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor
11 Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants
12 of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim
13 under the Private Attorneys General Act with respect to these violations.

14 64. Based on the foregoing, Plaintiff seeks to represent himself and all other
15 Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’
16 current and former nonexempt employees who worked for Defendants in California at any time
17 between January 14, 2021, and the present.

18 65. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect his interests and the interests of other similarly aggrieved employees, and to assess and
20 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and
21 costs, which he is entitled to receive under California Labor Code § 2699.

22 **PRAYER**

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

- 25 1. For an order certifying the proposed Classes;
- 26 2. For an order appointing Plaintiff as representative of the Classes;
- 27 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 28 4. Upon the First Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

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;

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

8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et. seq.*;

10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

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

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, 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 pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial 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 cited in Paragraph 62 (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 §§ 218.5, 1194 *et seq.*, 226, 2698 *et seq.* and 2802, and Code of Civil Procedure § 1021.5; and

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

Dated: March 21, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: March 21, 2022

HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff

PROOF OF SERVICE

Gerardo Sanchez v. Dutton Home Services, LLC
Los Angeles County Superior Court Case No. 22STCV01834

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On March 21, 2022, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Dutton Homes Services, LLC
c/o C T Corporation System, Agent for Service of Process
330 N. Brand Blvd. Suite 700
Glendale, CA 91203

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 21, 2022, at El Segundo, California.



Karla Islas