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Superior Court of California,
County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DANIEL A. MUNOZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

S & W ROOF TEAR-OFF CORPORATION, a
California corporation; and DOES 1 through
100,

Defendants.

CASE NO. 37-2022-00005924-CU-OE-CTL

**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) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (6) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE
(LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Daniel A. Munoz (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants S & W Roof Tear-Off Corporation, a California Corporation,
4 and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

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

15 **VENUE**

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

21 **PARTIES**

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

2698 *et seq.*, and Wage Order 16, which sets employment standards for the construction industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants did (and do) business by providing roof removal services in Southern California, and employed Plaintiff and other, similarly-situated non-exempt employees within San Diego County, and the State of California and, therefore, were (and are) doing business in San Diego County and the State of California.

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

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

7. At all relevant times, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each 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,

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 provide roof removal services to commercial and residential properties
5 throughout Southern California. Plaintiff worked for Defendants as a non-exempt employee from
6 approximately 2010 until approximately September 14, 2021, when he injured his back.
7 Throughout Plaintiff's employment, Plaintiff was regularly scheduled to work a shift that began
8 at 7:00 a.m., and Plaintiff's end time varied depending on Defendants' projects.

9 10. Throughout Plaintiff's employment with Defendants, Plaintiff was to report to a
10 trolley/train station at 7:00 a.m. where Plaintiff along with other non-exempt employees would be
11 picked up and transported to a work site. Despite arriving at the trolley/train station at 7:00 a.m.
12 each workday, Defendants only began compensating Plaintiff and other non-exempt employees
13 once they arrived at the work site. As a result, Plaintiff and other non-exempt employees were
14 not paid for all hours actually worked, resulting in unpaid minimum and overtime wages.

15 11. Furthermore, during Plaintiff's employment with Defendants, Defendants'
16 timekeeping policies and/or practices resulted in Plaintiff and other non-exempt employees not
17 being compensated for all hours actually worked, whether by rounding, time-shaving, or
18 otherwise. Specifically, throughout Plaintiff's employment, there was no mechanism for Plaintiff
19 to record his hours worked. Rather, Defendants' supervisor and/or foreman recorded the hours
20 worked by Plaintiff and other non-exempt employees, and prevented Plaintiff from recording his
21 hours worked in any manner. Upon information and belief, Defendants failed to accurately record
22 Plaintiff's and other non-exempt employees' hours worked, and instead recorded Plaintiff's and
23 other non-exempt employees' hours worked in quarter-hour increments. Defendants' timekeeping
24 policies/practices were not even handed and has resulted in Plaintiff and other non-exempt
25 employees not being compensated for all hours worked. As a result of Defendants' failure to pay
26 Plaintiff and other non-exempt employees for their actual hours worked, Defendants failed to pay
27 Plaintiff and other non-exempt employees for all minimum and overtime wages earned.

28 12. Defendants failed to provide Plaintiff and other non-exempt employees with all

1 legally compliant meal periods due to Defendants' meal period policies/practices, which have
2 frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
3 and missed meal periods. Specifically, due to work demands imposed by Defendants, Plaintiff
4 was often prevented from taking any meal period during his workday. Moreover, on the occasions
5 when Plaintiff was provided with a first meal period, Plaintiff was provided with a first meal
6 period that commenced after the completion of five hours of work. Although Plaintiff began his
7 work shift at 7:00 a.m., he was often not provided with a meal period until 1:00 p.m. or later,
8 which is after the completion of five hours of work. Additionally, Defendants failed to provide
9 Plaintiff and other non-exempt employees with second meal periods on shifts over 10.0 hours.
10 Defendants did not require Plaintiff and other non-exempt employees to record their meal periods,
11 rather, Defendants' supervisors and/or foreman would mark "30 minutes" on a timesheet for a
12 purported meal period. Upon information and belief, Defendants automatically deducted 30
13 minutes from the total hours worked for each shift worked regardless of whether the employee
14 actually took a full 30-minute compliant meal period. On those occasions when Plaintiff was not
15 provided with all legally-compliant meal periods to which he was entitled, Defendants failed to
16 compensate Plaintiff with the required meal period premium(s) for each workday there was a
17 meal period violation as mandated by Labor Code § 226.7. Upon information and belief,
18 Defendants maintained no mechanism for the payment of meal period premium payments as
19 required by Labor Code § 226.7, in the event that a legally-compliant meal period was not
20 provided to their non-exempt employees.

21 13. Plaintiff and other non-exempt employees were not authorized and permitted to
22 take all required rest periods due to Defendants' unlawful rest period policies/practices, which
23 failed to authorize and permit a net 10-minute rest period for every four hours worked, or major
24 fraction thereof. For the vast majority of Plaintiff's employment with Defendants, Plaintiff was
25 not authorized and permitted to take any rest periods during his work shift. During the last year
26 of his employment with Defendants, Plaintiff and other non-exempt employees were only
27 authorized and permitted to take a single rest break during their work day, despite working shifts
28 in excess of 6.0 hours. Additionally, Defendants failed to authorize and permit Plaintiff and other

1 non-exempt employees a third rest period during shifts in excess of 10.0 hours. On those
2 occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest
3 periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest
4 period premium(s) for each workday there was a rest period violation as mandated by Labor Code
5 § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of
6 rest period premium payments as required by Labor Code § 226.7, in the event that a legally-
7 compliant rest period was not authorized and permitted to their non-exempt employees.

8 14. As a result of Defendants' failure to pay all minimum and overtime wages and
9 failure to pay all meal and rest period premium wages, Defendants failed to timely pay all final
10 wages to Plaintiff and other former employees upon their separation of employment from
11 Defendants. As a further result of Defendants' failure to pay all minimum and overtime wages
12 and failure to pay all meal and rest period premium wages, Defendants maintained inaccurate
13 payroll records and failed to issue accurate and compliant itemized wage statements.

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

18 **CLASS ACTION ALLEGATIONS**

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

21 a. The Minimum Wage Class consists of all of Defendants' current and former non-
22 exempt employees in California (except for those non-exempt employees who
23 performed work on federal enclaves) who were subject to Defendants'
24 timekeeping policies and/or practices, during the four years and 178 days
25 immediately preceding the filing of this action through the present.

26 b. The Overtime Class consists of all of Defendants' current and former non-exempt
27 employees in California (except for those non-exempt employees who performed
28 work on federal enclaves) 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 (except for those non-exempt employees who performed work on federal enclaves) who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 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 (except for those non-exempt employees who performed work on federal enclaves) 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 Waiting Time Penalty Class consists of Defendants' formerly employed members of the Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class, during the three years and 178 days immediately preceding the filing of this action through the present.

f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class, during the one year and 178 days immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) 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

1 situated employees, which predominate over questions affecting only individual members
2 including, without limitation to:

- 3 i. Whether Defendants properly paid all overtime wages to members of the Overtime
4 Class;
- 5 ii. Whether Defendants paid at least the minimum wage for all hours worked to
6 members of the Minimum Wage Class;
- 7 iii. Whether Defendants provided all legally compliant meal periods to members of
8 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 9 iv. Whether Defendants authorized and permitted all legally compliant rest periods to
10 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 11 v. Whether Defendants provided meal and rest period premium payments for non-
12 compliant meal and rest periods;
- 13 vi. 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; and
- 16 vii. Whether Defendants furnished legally compliant wage statements to members of
17 the Wage Statement Class pursuant to Labor Code § 226.

18 19. **Predominance of Common Questions:** Common questions of law and fact
19 predominate over questions that affect only individual members of the Classes. The common
20 questions of law set forth above are numerous and substantial and stem from Defendants' policies
21 and/or practices applicable to each individual class member, including but not limited to
22 Defendants' timekeeping policies/practices, and meal and rest period policies/practices. As such,
23 the common questions predominate over individual questions concerning each individual class
24 member's showing as to their eligibility for recovery or as to the amount of their damages.

25 20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
26 Plaintiff was employed by Defendants as a non-exempt employee in California during the
27 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
28 herein, Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages

owed due to Defendants' timekeeping policies/practices, was not provided all required meal periods, was not authorized and permitted all rest periods, did not receive premium pay for non-compliant meal and rest periods, did not receive accurate and compliant itemized wage statements, and was not paid all wages owed at termination of employment.

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

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the 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 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

25. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC 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.

26. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 16 § 18(A) and

California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

29. 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 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 overtime hours work. Defendants caused Plaintiff and members of the Overtime Class to work overtime hours, but failed to credit these employees with all overtime hours actually worked.

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

35. Wage Order 16, § 11 and California Labor Code §§ 226.7, 516 and 558 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. Despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as alleged herein, Defendants did not pay these individuals an additional hour of pay at their respective regular rate for the rest periods that they failed to authorize and permit them to take, as required by Labor Code § 226.7.

36. Defendants' policies and practices described herein are unlawful and 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 premiums owing, including interests thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 16, and Civil Code §§ 3287(b) and 3289.

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1 **FIFTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

25 **SIXTH CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

1 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and members of the Wage Statement Class with complete and accurate itemized wage statements
4 in violation of Labor Code § 226 *et seq.*, which failed to list all earned minimum and overtime
5 wages and all meal and rest period premium wages.

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

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

18 48. Defendants have engaged and continue to engage in unfair and/or unlawful
19 business practices in California in violation of California Business and Professions Code § 17200
20 *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages
21 owed; (b) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages;
22 (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to
23 which they are entitled, and failing to pay them meal period premium payments; (d) failing to
24 authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they
25 are entitled, and failing to pay them rest period premium payments; (e) failing to issue accurate,
26 complete, itemized wage statements to Plaintiff and members of the Wage Statement Class; and
27 (f) failing to pay Plaintiff and members of the Waiting Time Class all wages due at separation of
28 employment.

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

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

10 51. The acts complained of herein occurred within the last four years and 178 days
11 immediately preceding the filing of the Complaint in this action.

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

17 **EIGHTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 53. Plaintiff re-alleges and incorporates by reference all previous paragraph.

21 54. Defendants have committed several Labor Code violations against Plaintiff,
22 members of the Classes, and other aggrieved employees. Plaintiff, as an "aggrieved employee"
23 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
24 employees, brings this representative action against Defendants to recover the civil penalties due
25 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
26 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
27 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
28 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each

1 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
2 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
3 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
4 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
5 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
6 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
7 subsequent violation per employee per pay period for those violations of the Labor Code for which
8 no civil penalty is specifically provided, based on the following Labor Code violations:

- 9 a. Failing to pay Plaintiff and other aggrieved employees all overtime
10 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194,
11 and 1198;
- 12 b. Failing to pay Plaintiff and other aggrieved employees the statutory
13 minimum wage for all hours worked in violation of Labor Code §§
14 1182.12, 1194, 1194.2, 1197, and 1198;
- 15 c. Failing to provide meal periods as required by law and failing to pay meal
16 period premiums to Plaintiff and other aggrieved employees at these
17 employees' respective regular rates of compensation for meal period
18 violations in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 19 d. Failing to authorize and permit Plaintiff and other aggrieved employees to
20 take all lawful rest periods to which they are entitled, and failing to pay
21 rest period premiums to Plaintiff and other aggrieved employees at these
22 employees' respective regular rates of compensation for rest period
23 violations in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 24 e. Failing to furnish Plaintiff and other aggrieved employees with accurate
25 and compliant itemized wage statements in violation of Labor Code § 226
26 *et seq.*;
- 27 f. Failing to timely pay all final wages due to Plaintiff and other aggrieved
28 employees in violation of Labor Code §§ 201-203;

g. Failing to pay Plaintiff and aggrieved employees all wages earned at least twice during 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 §§ 558, 1174, and 1198.

55. On February 15, 2022, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 54 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

56. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved employees, as defined by Labor Code § 2699(c).

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

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

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

9 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
10 226 *et seq.*;

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

15 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
17 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
18 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
19 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, based on
27 the Labor Code violations identified in Paragraph 54 (a)-(h);

28 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

2 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
3 §§ 226, 1194 and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

5
6 Dated: April 22, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



Paul K. Haines
Attorneys for Plaintiff

9
10 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: April 22, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:



Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Daniel A. Munoz v. S& W Rood Tear – Off Corporation
San Diego County Superior Court Case No. 37-2022-0005924-CU-OE-CTL

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 April 22, 2022, I served the foregoing document(s) described as:

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

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

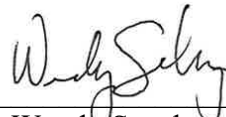
Agent of Process:

EDWARD THOMAS CLARE
8900 Grossmont Blvd #3
La Mesa, CA, 91941

[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 April 22, 2022, at El Segundo, California.



Wendy Sanchez