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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARLON VIRUETE, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

JON K. TAKATA CORPORATION dba
RESTORATION MANAGEMENT
COMPANY, a California Corporation; and
DOES 1 through 100,

Defendants.

Case No. 20STCV36412

**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, 1197);**
- (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) **FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802 and 2804);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (8) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*); and**

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

5 DEMAND FOR JURY TRIAL
6 UNLIMITED CIVIL CASE
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1 Plaintiff Marlon Viruete (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendant Jon K. Takata Corporation dba Restoration Management
4 Company, a California Corporation and DOES 1 through 100, inclusive (collectively
5 “Defendants”), and on information and belief allege 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 & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
10 1194, 1194.2 1197, 1198, 2698 *et seq.*, 2802, 2804 and Industrial Welfare Commission Wage
11 Order No. 16 (“Wage Order 16”), in addition to seeking injunctive relief, declaratory relief, and
12 restitution.

13 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
14 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits
15 of the Superior Court and will be established according to proof at trial.

16 3. This Court has jurisdiction over Defendants because, upon information and belief,
17 Defendants have sufficient minimum contacts in the State of California, or otherwise intentionally
18 avails itself/themselves to the California market so as to render the exercise of jurisdiction over
19 it/them by the California courts consistent with the traditional notions of fair play and substantial
20 justice.

21 **VENUE**

22 4. Venue as to each Defendant is proper in this judicial district pursuant to California
23 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
24 complained of hereon occurred in the County of Los Angeles. Defendants own, maintain offices,
25 transact business, have agent(s) within the County of Los Angeles, and/or otherwise are found
26 within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for
27 purposes of service of process.
28

PARTIES

5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident. During all relevant time times herein and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was and is a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and have been deprived of the rights guaranteed by California Business & Professions Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802 and 2804 and Wage Order 16, which sets employment standards for on-site occupations in the construction industry.

6. Plaintiff is informed and believes, and based thereon alleges that during all relevant times herein continuing to the present, Defendants were (and continue to be) in the business of providing building restoration services in Los Angeles County and other counties throughout California, and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County and the State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

7. 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. Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, believes, and based thereon alleges that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

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

9. At all times mentioned herein, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the

1 Defendants, and each of them, were the agents, servants, and employees of each and every one of
2 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned,
3 were acting within the course and scope of said agency and employment. Defendants, and each
4 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
5 omissions complained of herein.

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

11 11. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations
12 of more than 180 days are suspended from April 6, 2020 through October 1, 2020. Accordingly,
13 the relevant time period for each cause of action pled herein has been calculated based on the
14 tolled statute of limitations date of April 6, 2020.

15 **GENERAL FACTUAL ALLEGATIONS**

16 12. Plaintiff was employed by Defendants as an “technician” from approximately
17 March 2015 until approximately March 2019, when Defendants terminated his employment.
18 Plaintiff’s job duties generally included the restoration of buildings after fire and/or water
19 damage.

20 13. Throughout Plaintiff’s employment with Defendants, Defendants’ business
21 operated twenty-four hours a day, seven days a week. As a result, Plaintiff and other non-exempt
22 employees were frequently required to be “on-call” and remain by their cellular phones in order
23 to return to job sites at any time throughout the day to perform restoration following fire and/or
24 water damage to customers’ businesses and/or residences. However, Plaintiff and other non-
25 exempt employees were not compensated by Defendants for their time spent while “on-call.”
26 Additionally, during at least a portion of the relevant time period, Plaintiff and other non-exempt
27 employees did not record their hours worked; rather, a project manager and/or supervisor would
28 record the hours worked by Plaintiff and other non-exempt employees on pre-populated time

1 sheets in whole-hour or half-hour increments, which did not accurately reflect all hours actually
2 worked. Moreover, Plaintiff and other non-exempt employees were not compensated for all time
3 spent traveling to various job sites across Southern California, and were also not compensated for
4 all time spent traveling between job sites in the same workday; rather, based upon information
5 and belief, they were only paid for time spent working at the job sites. Additionally, Plaintiff and
6 other non-exempt employees would be required to unload debris and trash from a jobsite after
7 they clocked out for the day but would not be compensated for the time spent unloading debris
8 and trash. As a result, Plaintiff and other non-exempt employees have not been paid for all hours
9 worked, including on workdays when they worked over 8 hours and/or in workweeks when they
10 worked over 40 hours, resulting in unpaid minimum wages and overtime wages.

11 14. Defendants failed to provide Plaintiff and other putative class members with all
12 legally compliant meal periods due to Defendants' meal period policies/practices, which have
13 resulted in missed, late (commencing after the fifth hour of work) and short (less than 30 minutes)
14 first meal periods. Upon information and belief, Plaintiff and other non-exempt employees would
15 begin working at 5:00 a.m. but would not receive a meal period until approximately 11:30 a.m.
16 However, Plaintiff and non-exempt employees were instructed to fill out time sheets which stated
17 that their meal period was taken by the fourth hour into their shift, when in fact, the meal period
18 was never taken or taken beyond the fifth hour of work. Furthermore, Plaintiff often worked
19 shifts in excess of 10.0 hours but was not provided a second meal period, due to Defendants' meal
20 period policies/practices, which failed to provide second meal periods for shifts in excess of 10.0
21 hours. On those occasions when Plaintiff was not provided with all legally-required meal periods
22 to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
23 premium for each workday in which he experienced a meal period violation as mandated by Labor
24 Code § 226.7. Upon information and belief, during at least a portion of the putative class period,
25 Defendants maintained no payroll code for paying meal period premiums under Labor Code §
26 226.7.

27 15. Defendants have also failed to authorize and permit all rest periods to Plaintiff and
28 other non-exempt employees. Specifically, rather than authorize and permit a ten-minute rest

1 period for every four hours worked, or major fraction thereof, Defendants only provide one
2 combined meal and rest period which takes place in the middle of the workday. As a result,
3 Defendants have failed to authorize and permit all required rest periods. Despite failing to
4 authorize and permit Plaintiff and other non-exempt employees to take all rest periods to which
5 they are entitled, upon information and belief, Defendants maintained no mechanism for the
6 payment of rest period premium payments as required by Labor Code section 226.7 and did not
7 pay Plaintiff or other non-exempt employees any rest period premiums during the relevant time
8 period.

9 16. Defendants have also failed to reimburse Plaintiff and other non-exempt
10 employees for all necessary business expenses. Specifically, Defendants required Plaintiff and
11 other non-exempt employees to use their personal cellular phones to remain on call for work
12 related purposes, however, Defendants failed to reimburse Plaintiff and other non-exempt
13 employees for the costs associated with their cellular phones. As a result, Defendants have failed
14 to reimburse Plaintiff and other non-exempt employees for expenses incurred in the course of
15 their employment.

16 17. As a result of Defendants' failure to pay all minimum and overtime wages, as well
17 as all meal and rest period premium wages, Defendants failed to timely pay Plaintiff and other
18 former non-exempt employees all wages owed at the time of their respective separations from
19 employment, and failed to issue accurate, compliant, itemized wage statements to Plaintiff and
20 other non-exempt employees.

21 **CLASS ACTION ALLEGATIONS**

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

- 24 a. The Overtime Class consists of all of Defendants' current and former non-exempt
25 employees in California who worked more than 8 hours in a workday and/or 40
26 hours in a workweek who: (i) remained "on-call" for work related purposes; and/or
27 (ii) were subject to Defendants' timekeeping policies and/or practices, during the
28 period of April 6, 2016 through the present.

- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) remained "on-call" for work related purposes, and/or (ii) were subject to Defendants' timekeeping policies/practices, during the period of April 6, 2016 through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California 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 period of April 6, 2016 through the present.
- d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the period of April 6, 2020 through the present.
- e. The Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who used their personal cell phones for business related purposes, during the period of April 6, 2020 through the present.
- f. The Waiting Time Class consists of the members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, whose employment with Defendants ended at any time during the time period of April 6, 2017 through the present.
- g. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, during the one year and 178 days immediately preceding the filing of the Complaint through the present.

19. **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 Class Members number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194, by requiring overtime work and not paying for said work according to the overtime laws of the State of California;
- ii. Whether Defendants violated California law by requiring members of the Minimum Wage Class to perform work for Defendants without paying them at least the minimum wage for all hours worked;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods;
- vi. Whether Defendants' reimbursement policies/practices failed to reimburse or indemnify Expense Reimbursement Class members for necessary business expenditures, thereby depriving members of the Expense Reimbursement Class of all reimbursements to which they have been entitled as a matter of law;
- vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- viii. Whether Defendants failed to pay members of the Waiting Time Class all of their final wages at the time of separation of employment.

21. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping

1 and meal and rest period policies/practices, and their failure to provide reimbursement for cell
2 phone expenses incurred for work-related purposes. As such, these common questions
3 predominate over individual questions concerning each individual class members' showing as to
4 their eligibility for recovery or as to the amount of their damages.

5 22. **Typicality:** Plaintiff's claims are typical of the Classes' claims because
6 Defendants employed Plaintiff as a non-exempt employee in California during the statutes of
7 limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff,
8 like the members of the Classes, was deprived of all overtime and minimum wages for all hours
9 worked, was not provided all meal periods, was not authorized and permitted all rest periods, did
10 not receive premium pay for meal and rest period violations, was not paid all wages owed at
11 termination of employment, did not receive accurate and compliant itemized wage statements,
12 and did not receive all reimbursements to which he was entitled for necessary business expenses
13 incurred.

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

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

1 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
2 their vastly superior financial and legal resources. Moreover, requiring each member of the
3 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
4 employees who would be disinclined to file an action against their former and/or current employer
5 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
6 employment. Further, the prosecution of separate actions by the individual class members, even
7 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
8 with respect to the individual class members against Defendants herein; and which would
9 establish potentially incompatible standards of conduct for Defendants; and/or legal
10 determinations with respect to individual class members which would, as a practical matter, be
11 dispositive of the interest of the other class members not parties to adjudications or which would
12 substantially impair or impede the ability of the class members to protect their interests. Further,
13 the claims of the individual members of the class are not sufficiently large to warrant vigorous
14 individual prosecution considering all of the concomitant costs and expenses attending thereto.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

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

23 27. Plaintiff and members of the Overtime Class worked overtime hours for
24 Defendants. At all times relevant herein, Defendants were required to properly compensate hourly
25 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
26 hours worked pursuant to California Labor Code § 1194 and IWC Wage Order No. 16. Wage
27 Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times such
28 employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of

40 hours of work in the workweek. Labor Code § 510 and Wage Order 16, Section 3 also require an employer to pay an employee double the employee's regular rate of work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half times their regular rate of pay for such hours. Defendants also caused Plaintiff and the members of the Overtime Class to work in excess of 12 hours in a workday but did not properly compensate Plaintiff and the members of the Overtime Class at double their regular rate of pay for such hours.

28. Defendants' policy and practice of requiring overtime work and not paying for all overtime hours worked violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198, and Wage Order 16.

29. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 510, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

31. 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 attorney's fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interests accrued thereon.

32. Defendants' policy and practice of not paying all minimum wages violates

California Labor Code §§ 204, 210, 216, 558, 1182.12, 1197.1, 1198, and the applicable IWC Wage Order.

33. Such a practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

35. 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 pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

36. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 16, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

38. 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 complaint rest periods, 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.

39. 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, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

41. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or 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.

42. Plaintiff is informed and believe, and based thereon allege, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their termination, including, among other things, all earned minimum and overtime wages and all meal and rest period premiums owed.

43. 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 Labor Code §§ 201-203. Defendants' failure to pay all final wages was

1 willful within the meaning of Labor Code § 203.

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

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES**

9 **(AGAINST ALL DEFENDANTS)**

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

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

15 47. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
16 states that "any contract or agreement, express or implied, made by any employee to waive the
17 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
18 employee or his personal representative of any right or remedy to which he is entitled under the
19 laws of this State."

20 48. As a proximate result of Defendants' policies and/or practices in violation of Labor
21 Code §§ 2802 and 2804, and Wage Order 16, § 8, Plaintiff and members of the Expense
22 Reimbursement Class were damaged in sums, which will be shown according to proof.

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 52. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all earned overtime
8 wages; (b) failing to pay Plaintiff and members of the Minimum Wage Class at least the minimum
9 wage for all hours worked; (c) failing to provide all required meal periods to Plaintiff and
10 members of Meal Period Class, and/or failing to pay them meal period premiums payments; (d)
11 failing to authorize and permit all required duty-free rest periods to Plaintiff and members of the
12 Rest Period Class, and/or failing to pay them rest period premiums payments; (e) failing to pay
13 Plaintiff and members of the Waiting Time Class all wages due at separation of employment; and
14 (f) failing to reimburse all necessary business expenses to Plaintiff and members of the Expense
15 Reimbursement Class.

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

21 54. Because Plaintiff was and is a victim of Defendants' unfair and/or unlawful
22 conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks
23 full restitution of monies, as necessary and according to proof, to restore any and all monies
24 withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code
25 §§ 17203 and 17208.

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

28 56. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and those of the Classes, to obtain restitution, to secure injunctive relief on
2 behalf of Plaintiff and Defendants' current non-exempt employees, and to enforce important
3 rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys'
4 fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

5 **EIGHTH CAUSE OF ACTION**

6 **WAGE STATEMENT PENALITIES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

21 **NINTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **(AGAINST ALL DEFENDANTS)**

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

25 62. Defendants have committed several Labor Code violations against Plaintiff,
26 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
27 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
28 employees, brings this representative action against Defendants to recover the civil penalties due

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

- 13 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
14 wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194,
15 1194.2, 1197, and 1198;
- 16 b. Failing to compensate Plaintiff and other aggrieved employees all overtime
17 wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 18 c. Failing to provide Plaintiff and other aggrieved employees of all legally
19 required meal periods and failing to pay meal period premiums at the
20 employees respective regular rates of compensation in violation of Labor Code
21 §§ 226.7, 512, 558, and 1198;
- 22 d. Failing to authorize and permit Plaintiff and other aggrieved employees all
23 legally required rest periods and failing to pay rest period premiums in
24 violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 25 e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary
26 business expenses in violation of Labor Code §§ 2802 and 2804;

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

10 63. On April 1, 2022, Plaintiff notified Defendants via certified mail and notified the
11 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
12 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
13 under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor
14 Code identified in Paragraph 62 (a)-(i). Now that sixty-five days have passed from Plaintiff
15 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
16 that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements
17 for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

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

26 **PRAYER**

27 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
28 this suit is brought against Defendants, jointly and severally, 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 Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payments of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 558, 1194, 1194.2 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
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 statutory waiting time penalties pursuant to Labor Code § 203;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
10. Upon the Seventh Cause of Action, for injunctive relief and 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 Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
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 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 violations of Labor Code sections identified in Paragraph 62 (a)-(i) above.

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §§ 218.6, 1194(a), 2802(b) and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194 *et seq.*, 2698 *et seq.*, and 2802(c), and Code of Civil Procedure § 1021.5; and

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

Dated: July 8, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: July 8, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

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Los Angeles County Superior Court Case No. 20STCV36412

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 July 18, 2022, I served the foregoing document(s) described as:

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

SIMPSON, GARRITY, INNES & JACUZZI

[X] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

[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 July 18, 2022, at El Segundo, California.



Nestor Castillo