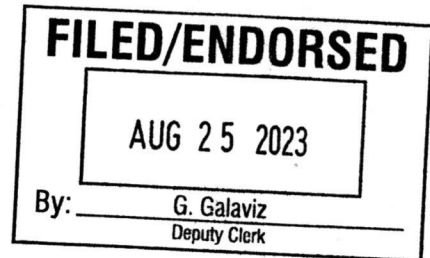


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7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 **JOE HART, individually and on behalf of all**
11 **other similarly situated employees,**

12 **Plaintiff,**

13 **vs.**

14 **ALUMINUM COATING TECHNOLOGIES,**
15 **INC., a California Corporation;**
16 **BRUCE CENICEROS, an individual;**
17 **ANDREA CENICEROS, an individual; and**
18 **DOES 1 to 100, inclusive,**

19 **Defendants.**

Case No. 34-2022-00320564

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR
DAMAGES:**

1. **Failure to Pay Overtime Wages**
2. **Failure to Pay Split Shift Premiums**
3. **Meal Period Violations**
4. **Rest Period Violations**
5. **Wage Statement Violations**
6. **Waiting Time Penalties**
7. **Failure to Reimburse Expenses**
8. **Unfair Competition**
9. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

BY FAX

1 The May 17, 2022, notice was also sent via certified mail to Defendants on the same day. To date, the
2 LWDA has not provided any response to Mr. Hart's notice correspondence. The original notice was
3 amended on June 9, 2023, to include Plaintiffs as named representatives. *See Hutcheson v. Sup. Ct.*, 74
4 Cal. App. 5th 932, 945 (2022) (holding another individual may be substituted in to take over a pending
5 PAGA action and relation back will apply where the subsequent claims rest on the same general set of
6 facts, involve the same injury, and refer to the same instrumentality as the claims in the original
7 complaint). Plaintiffs' notice includes the same facts and legal bases for claims as Mr. Hart's notice.
8 The June 9, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the
9 LWDA has not provided any response to Plaintiffs' notice correspondence. Accordingly, Plaintiffs have
10 exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may
11 bring this action on behalf of themselves and all similarly situated employees, *i.e.*, Aggrieved
12 Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.
13 App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees includes but is not limited to the
14 following: all individuals who have, or continue to, work for Defendants in California from May 17,
15 2021 to the present.

16 **PARTIES**

17 5. CLINT DAVIDSON is an individual over the age of eighteen (18) and is a resident of
18 the State of California.

19 6. PATRICK WIRTH is an individual over the age of eighteen (18) and is a resident of
20 the State of California.

21 7. On information and belief, Plaintiffs allege, ALUMINUM COATING
22 TECHNOLOGIES, INC., is now and/or at all times mentioned in this Complaint was a California
23 Corporation and the owner and operator of an industry, business and/or facility doing business in the
24 State of California.

25 8. Plaintiffs are informed and believe, and thereupon allege, that BRUCE CENICEROS
26 is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiffs
27 further alleges that BRUCE CENICEROS is an owner, director, officer, and/or managing agent of
28 ALUMINUM COATING TECHNOLOGIES, INC. responsible for causing the violations outlined in

1 All individuals who have, or continue to, work for Defendants as non-
2 exempt employees in California from May 23, 2018 to the present.

3 16. This action has been brought and may be properly maintained as a class action,
4 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
5 defined community of interests in the litigation and the proposed class is easily ascertainable.

6 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
7 is impracticable under the circumstances of this case. While the exact number of class
8 members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that
9 Defendants have employed as many as fifty (50) individuals falling within the above
10 stated class definition throughout the State of California during the applicable statute of
11 limitations, who were subjected to the policies and practices outlined in this Complaint.
12 As such, joinder of all members of the putative class is not practicable.

13 (b) Common Questions Predominate: Common questions of law and fact exist as to all
14 members of the putative class and predominate over questions that affect only individual
15 members of the class. These common questions of law and fact include, without
16 limitation, the following:

- 17 (1) Whether Defendants had a policy or practice to pay split shift premiums;
- 18 (2) Whether Defendants had a policy or practice to incorporate the value of all non-
19 discretionary remuneration when calculating putative class members' regular rates
20 of pay for the purpose of paying overtime wages;
- 21 (3) Whether Defendants had a policy or practice to incorporate the value of all non-
22 discretionary remuneration when calculating putative class members' regular rates
23 of pay for the purpose of paying paid sick time;
- 24 (4) Whether Defendants had a policy or practice to pay putative class members all
25 overtime and double time wages they were owed;
- 26 (5) Whether Defendants had a policy or practice authorizing and permitting all meal
27 periods owed;
- 28

1 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the
2 putative class. For all relevant times, Plaintiffs resided in California and worked for
3 Defendants in California. Moreover, Plaintiffs are adequate representatives of the
4 putative class as Plaintiffs have no interests that are adverse to those of putative class
5 members. Additionally, Plaintiffs have retained counsel who has substantial experience
6 in complex civil litigation and wage and hour matters.

7 (e) Superiority: A class action is superior to other available means for the fair and efficient
8 adjudication of the controversy since individual joinder of all members of the putative
9 class is impracticable. Class action treatment will permit a larger number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously,
11 efficiently, and without the unnecessary duplication of effort and expense that numerous
12 individual actions would engender. Further, as damages suffered by each individual
13 member of the class may be relatively small, the expenses and burden of the individual
14 litigation would make it difficult or impossible for individual members of the class to
15 redress the wrongs done to them, and an important public interest will be served by
16 addressing the matter as a class action. The cost to the court system of adjudication of
17 such individualized litigation would be substantial. Individualized litigation would also
18 present the potential for inconsistent or contradictory judgments.

19 17. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 GENERAL ALLEGATIONS

22 18. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 17 as though fully
23 set forth herein.

24 19. Plaintiffs worked for Defendants within the claim period as non-exempt employees.
25 Similarly situated employees also worked for Defendants as non-exempt employees. Plaintiff and
26 similarly situated employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a
27 week, incurring overtime and were paid non-discretionary remuneration, including but not limited to
28 bonuses. Defendants did not correctly incorporate the value of the nondiscretionary remuneration into

1 Plaintiffs CLINT DAVIDSON and PATRICK WIRTH ("Plaintiffs"), on behalf of themselves
2 and all other similarly situated employees, hereby file this Complaint against Defendants
3 ALUMINUM COATING TECHNOLOGIES, INC., a California Corporation; BRUCE
4 CENICEROS, an individual; ANDREA CENICEROS, an individual; and DOES 1 to 100, inclusive
5 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiffs allege
6 the following:

7 INTRODUCTION

8 1. This is a class action and Private Attorneys General Act lawsuit brought by Plaintiffs for
9 failure to pay overtime wages, failure to provide meal periods or pay premiums in lieu thereof, failure to
10 provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure
11 to pay final wages, failure to maintain accurate records, failure to pay all paid sick time, failure to
12 reimburse expenses, and failure to pay split shift premiums.

13 JURISDICTION AND VENUE

14 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
15 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
16 Labor Code, California Business and Professions Code, and Wage Order No. 1.

17 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
18 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
19 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
20 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
21 (1984).

22 4. On May 17, 2022, Joe Hart sought permission pursuant to California Labor Code section
23 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney
24 General on behalf of himself and other similarly situated employees, which included Plaintiffs. Pursuant
25 to California Labor Code section 2699.3, Mr. Hart gave written notice via online submission to the
26 Labor and Workforce Development Agency ("LWDA") on approximately May 17, 2022. Mr. Hart
27 provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted
28 under the Private Attorneys General Act cause of action. Mr. Hart also submitted the \$75.00 filing fee.

1 the First through Seventh and Ninth causes of action. As such BRUCE CENICEROS is individually
2 liable pursuant to California Labor Code section 558.1.

3 //

4 9. Plaintiffs are informed and believe, and thereupon allege, that ANDREA
5 CENICEROS is an individual over the age of eighteen (18) and is a resident of the State of
6 California. Plaintiffs further alleges that ANDREA CENICEROS is an owner, director, officer,
7 and/or managing agent of ALUMINUM COATING TECHNOLOGIES, INC. responsible for
8 causing the violations outlined in the First through Seventh and Ninth causes of action. As such
9 ANDREA CENICEROS is individually liable pursuant to California Labor Code section 558.1.

10 10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
11 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
12 are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true
13 names and capacities of these DOE Defendants when they are ascertained.

14 11. At all times mentioned herein, each Defendant was the agent or employee of each of the
15 other Defendants and was acting within the course and scope of such agency or employment. The
16 Defendants are jointly and severally liable to Plaintiffs.

17 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
18 were members of and/or engaged in a joint employment, joint venture, partnership and common
19 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
20 joint venture, partnership and common enterprise.

21 13. Defendants, and each of them, now and/or at all times mentioned in this Complaint
22 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

23 14. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
24 wrongs, complaints, injuries and/or damages alleged in this Complaint.

25 **CLASS ALLEGATIONS**

26 15. Plaintiffs bring the First through Eighth Causes of Action on behalf of themselves and
27 all others similarly situated as a class action pursuant to California Code of Civil Procedure section
28 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

- 1 (6) Whether Defendants had a policy or practice authorizing and permitting all rest
2 periods owed;
- 3 (7) Whether Defendants had a policy or practicing authorizing a second meal period
4 when putative class members worked shifts over 10 hours;
- 5 (8) Whether Defendants had a policy or practice authorizing a third rest period when
6 putative class members worked shifts over 10 hours;
- 7 (9) Whether Defendants required putative class members to use their personal
8 cellphones for work without paying any reimbursement;
- 9 (10) Whether Defendants had a policy or practice to reimburse putative class members
10 for expenses incurred for work;
- 11 (11) Whether as a result of Defendants' policies and practices putative class members
12 received all wages, due and owing, at the time of their termination or separation;
13 and
- 14 (12) Whether Defendants provided putative class members with wage statements that
15 complied with Labor Code section 226.

16 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiffs and all
19 members of the putative class were non-exempt employees who received non-
20 discretionary remuneration that was not incorporated into the regular rate of pay, worked
21 uncompensated overtime and double time hours, worked split shifts, did not receive all
22 meal and rest periods owed, and used their personal cellphones for work resulting in
23 failure to pay overtime, failure to pay split shift premiums, meal and rest period
24 violations, and expenses that should have been reimbursed. Additionally, Defendants
25 issued Plaintiffs and all members of the putative class wage statements that did not
26 comply with Labor Code section 226. As a result, Plaintiffs and each member of the
27 putative class will have suffered the same type of harm and seek the same type of
28 recovery based on the same legal theories.

1 Plaintiffs' and similarly situated employees' regular rates of pay when calculating overtime, double
2 time, or paid sick time.

3 20. Defendants failed to pay Plaintiffs and similarly situated employees all overtime and
4 double time premiums they were owed. If Plaintiff and similarly situated employees worked a
5 significant amount of overtime or double time, Defendants would spread those hours out over other days
6 to avoid paying all overtime and double time premiums owed.

7 21. Defendants required Plaintiffs and similarly situated employees to work split shifts
8 without paying split shift premiums.

9 22. Defendants failed to authorize and permit Plaintiffs and similarly situated employees to
10 take all meal and rest periods they were entitled to. Plaintiffs and similarly situated employees worked
11 on time sensitive tasks that prevented them from being able to take all meal and rest periods or
12 prevented them from being able to timely take their meal and rest periods. Additionally, Plaintiffs and
13 similarly situated employees worked shifts longer than ten (10) hours in a day and did not receive all
14 second meal periods and third rest periods they were entitled to. Defendants did not pay Plaintiffs and
15 similarly situated employees premiums for noncompliant meal and rest periods.

16 23. Defendants required Plaintiffs and similarly situated employees to use their personal
17 cellphone for task at work, such as tracking hours worked, placing online orders for parts, or looking up
18 parts and commutating what parts to order. Defendants did not reimburse Plaintiffs and similarly
19 situated employees for the use of their personal cellphones for work.

20 24. Defendants failed to provide Plaintiffs and similarly situated employees with legally
21 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate
22 regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate
23 gross and net wages earned. As a result, Plaintiffs and similarly situated employees were not able to
24 determine the total wages owed to them from their paystubs alone.

25 25. To date, Defendants have not paid Plaintiffs and similarly situated employees all
26 overtime and double time wages, paid sick time, split shift premiums, and meal and rest period
27 premiums owed to them.

28 //

26. Defendant Aluminum Coating Technologies, Inc. identified Defendant Bruce Cenicerros in its filings with the California Secretary of State from 2020 to the present as its Chief Executive Officer, Chief Financial Officer, and Director. Defendant Aluminum Coating Technologies, Inc. identified Defendant Andrea Cenicerros in its filings with the California Secretary of State from 2020 to January 2022 as its Secretary and Director and from January 2022 to present as its Secretary. Plaintiffs are informed and believe that Bruce Cenicerros and Andrea Cenicerros are owners of Aluminum Coating Technologies, Inc. Plaintiffs are informed and believe that Bruce Cenicerros and Andrea Cenicerros were responsible for creating and electing to implement or participating in creating and electing to implement Aluminum Coating Technologies, Inc.'s payroll and compensation policies and practices, or that Bruce Cenicerros and Andrea Cenicerros were aware of such policies and practices and ratified them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

27. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 26 as though fully set forth herein.

28. During the period Plaintiffs were employed by Defendants, Defendants were required to compensate Plaintiffs at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 1, section (3)(A); Cal. Lab. Code §§ 510, 1194.

29. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime and double time hours worked at their regular rate of pay.

30. Plaintiffs and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

11

11

31. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY SPLIT SHIFT PREMIUMS
(As to all Defendants)

32. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 31 as though fully set forth herein.

33. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least one hour's pay at the State's minimum wage for each split shift that they worked. *See* MW-Order; IWC Wage Order, No. 1, section 4(A); Cal. Lab. Code § 1194.

34. Plaintiffs and similarly situated employees were not exempt from the State's Minimum Wage Order. Defendants aware of their obligation to pay split shift premiums but failed to do so.

35. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

36. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 35 as though fully set forth herein.

37. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

38. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 1, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

39. California Labor Code section 512 and Wage Order No. 1 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes.

1 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
2 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
3 (1) hour of pay at their regular rate of compensation for each meal period not provided.

4 40. Defendants employed Plaintiffs and similarly situated employees for periods of more
5 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
6 period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more
7 than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated
8 employees to take their first meal period before the completion of their fifth hour of work and failed
9 to allow Plaintiffs and similarly situated employees to take their second meal period before the
10 completion of their tenth hour of work. Plaintiffs and similarly situated employees did not waive
11 their rights to all meal periods throughout their employment.

12 41. Defendants further failed to pay Plaintiffs and similarly situated employees the
13 applicable meal period premiums for any such missed meal breaks.

14 42. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
15 employees have been damaged as stated in the section below entitled "DAMAGES," which is
16 incorporated here to the extent pertinent as if set forth here in full.

17 **FOURTH CAUSE OF ACTION**
18 **REST PERIOD VIOLATIONS**
19 **(As to all Defendants)**

20 43. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 42 as though fully
21 set forth herein.

22 44. An employer must provide an employee a rest period in accordance with the
23 applicable Wage Order and California Labor Code section 226.7.

24 45. California Labor Code section 226.7 and Wage Order No. 1, section 12(A) require an
25 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
26 four (4) hours or a major fraction thereof.

27 46. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
28 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
they worked more than four (4) hours or a major fraction thereof.

47. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable rest period premiums for any such missed rest periods.

48. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

49. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 48 as though fully set forth herein.

50. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

51. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, meal and rest premiums, and gross and net wages

1 earned. Plaintiffs and similarly situated employees suffered confusion over whether they received all
2 wages owed and were prevented from effectively challenging information on their wage statements.

3 52. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
4 employees have been damaged as stated in the section below entitled "DAMAGES," which is
5 incorporated here to the extent pertinent as if set forth here in full.

6 **SIXTH CAUSE OF ACTION**
7 **WAITING TIME PENALTIES**
8 **(As to all Defendants)**

9 53. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 52 as though fully
10 set forth herein.

11 54. An employer must pay an employee who is terminated all unpaid wages immediately
12 upon termination. *See* Cal. Lab. Code § 201.

13 55. An employer must pay an employee who resigns all unpaid wages within seventy-two
14 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

15 56. Plaintiffs and similarly situated employees did not receive all wages, including split shift
16 premiums, overtime wages, meal and rest period premiums, or all sick leave pay owed at their
17 termination or within the required time after their separation from employment.

18 57. An employer who willfully fails to pay an employee wages in accordance with California
19 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
20 days. *See* Cal. Lab. Code § 203.

21 58. Defendants knew of their obligation to pay Plaintiffs and similarly situated employees
22 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs
23 and similarly situated employees worked split shifts, did not receive all meal and rest periods, worked
24 overtime and double time worked, and were paid non-discretionary remuneration, but failed to correctly
25 compensate putative class members for all wages owed. Such conduct shows Defendants had
26 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
27 remaining wages owed.

28 //

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59. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

60. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 59 as though fully set forth herein.

61. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

62. Defendants required Plaintiffs and similarly situated employees to use their personal cellphones for work but failed to reimburse them for such use.

63. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Aluminum Coating Technologies, Inc. and DOES 1 to 100)

64. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 63 as though fully set forth herein.

65. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See California Business and Professions ("B&P") Code § 17200.*

66. Plaintiffs and similarly situated employees were not paid all wages owed, including split shift premiums, overtime wages, and paid sick leave during their employment or any time thereafter.

Moreover, through Defendants conduct Plaintiffs and similarly situated employees were denied statutory protections regarding meal and rest periods.

67. Plaintiffs further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

68. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

69. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 68 as though fully set forth herein.

70. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiffs and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 1, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 1, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 1, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 226.3, 1174, 1198 and IWC Wage Order No. 1, § 7 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 1, § 4 (Failure to Pay Split Shift Premiums)

71. Plaintiffs seek civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

72. Plaintiffs seek these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

73. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiffs requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;

1 4. As to the Third Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 5. As to the Fourth Cause of Action:

- 6 a. Wages in an amount to be proven at trial;
- 7 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 8 section 1021.5;

9 6. As to the Fifth Cause of Action:

- 10 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 11 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 12 violation occurred and one hundred dollars (\$100.00) per employee for each
- 13 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 14 (\$4,000.00);
- 15 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 16 226(e);

17 7. As to the Seventh Cause of Action:

- 18 a. An amount to be proven at trial;
- 19 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

20 8. As to the Ninth Cause of Action:

- 21 a. For civil penalties as provided in the Labor Code for each enumerated
- 22 violation;
- 23 b. For those Labor Code sections where there is no civil penalty provided for their
- 24 violation, the default penalty provided in Labor Code section 2699(f): for any
- 25 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 26 period; For any subsequent violation, two hundred dollars (\$200) for each
- 27 aggrieved employee per pay period;
- 28 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

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d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

Dated: August 22, 2023

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiffs

1 *Hart v. Aluminum Coating Technologies, Inc.*
2 *Sacramento County Superior Court of California 34-2022-00320564*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On August 24, 2023, I served the following documents on the party below:

- 9 • **THIRD AMENDED COMPLAINT FOR DAMAGES**

10 Erica L. Rosasco (SBN 220836) 11 Michael Blankinship (SBN 302659) 12 Rosasco Law Group, APC 13 6540 Lonetree Blvd., Ste. 100 14 Rocklin, California 95765 15 Phone: (916) 672-6552 16 Fax: (916) 672-6563 17 Email: erica@rosascolawgroup.com 18 mike@rosascolawgroup.com 19 accounting@rosascolawgroup.com	
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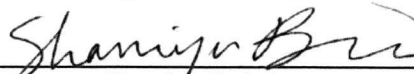
20 [] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set forth
24 above, I served the aforementioned document(s) on the parties in said action
25 by placing a true copy thereof enclosed in a sealed envelope with postage
26 thereon fully prepaid, for collection and mailing on this date, following
27 ordinary business practices, at Elk Grove, California, addressed as set forth
28 above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: UPS.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct, and that this declaration was executed on August 24, 2023, at Salt Lake City, Utah.

27 
28 Shaniya Baird