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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

DEL'S FLOORING CONTRACTORS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No.: CVRI2202654

**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) 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
§ 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Michael Kotcherha ("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 Del's Flooring Contractors, Inc., a California Corporation, and
4 DOES 1 to 100 (collectively "Defendants"), inclusive, and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
9 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, and
10 Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law"), and Industrial
11 Welfare Commission Wage Order 16-2001 ("Wage Order 16"), in addition to seeking declaratory
12 relief and restitution. This action is brought pursuant to California Code of Civil Procedure § 382.
13 This Court has jurisdiction over Defendants' violations of the California Labor Code because the
14 amount in 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 Riverside county. Defendants own, maintain offices, transact business, have an agent
19 or agents within Riverside county, and/or otherwise are found within Riverside county, and
20 Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident and resides in Riverside county. During the
24 four years immediately preceding the filing of this action and within the statute of limitations
25 periods applicable to each cause of action pled herein, Defendants employed Plaintiff as a non-
26 exempt employee in Palm Desert, California. Plaintiff was, and is, a victim of Defendants'
27 policies and/or practices complained of herein, lost money and/or property, and has been deprived
28 of the rights guaranteed by California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516,

558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, California's Unfair Competition Law, and Wage Order 16, which sets employment standards for occupations in the construction industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business within Riverside county and the State of California by employing non-exempt employees in various capacities.

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 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 herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and based 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 times herein mentioned, 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 are in the carpeting, flooring, and tiling business and provide
5 installation services throughout the Coachella Valley. Plaintiff worked for Defendants as a non-
6 exempt “flooring installer” from June 7, 2021, to approximately October 8, 2021. Unless
7 otherwise specified, all allegations contained herein occurred during Plaintiff’s employment with
8 Defendants.

9 10. Plaintiff was regularly paid on a piece-rate basis, whereby he was paid a
10 predetermined amount per unit of flooring he installed. Although Defendants track the total
11 number of hours Plaintiff and other non-exempt employees worked each week, Defendants have
12 failed to accurately record and compensate Plaintiff and other non-exempt employees for so-
13 called “non-productive” time (i.e. hours employees were working but were not actually
14 performing piece-rate work). For example, Plaintiff and other non-exempt employees are
15 regularly required to wait for materials before they can begin their installations. Additionally,
16 Plaintiff and other non-exempt employees are required to spend additional time loading and
17 unloading their trucks with flooring materials each workday. Under Defendants’ piece-rate
18 compensation system, Plaintiff and other non-exempt employees are not compensated for this
19 nonproductive time. As a result of Defendants’ failure to compensate for nonproductive time,
20 Defendants have not paid Plaintiff and other non-exempt employees for all hours worked at the
21 minimum wage. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 48-49
22 (holding that a piece-rate compensation structure that does not separately compensate employees
23 for non-productive time violates California minimum wage laws).

24 11. When being paid on a piece-rate basis, Plaintiff and other non-exempt employees
25 regularly worked in excess of 8 hours per day and/or 40 hours per week. However, Defendants
26 fail to pay Plaintiff and other non-exempt employees overtime compensation, and instead pay
27 employees solely based on their piece-rate earnings. As a result of Defendants’ timekeeping
28

1 policies/practices, Plaintiff and other non-exempt employees were deprived of earned overtime
2 compensation.

3 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
4 legally compliant meal periods. Specifically, Defendants regularly failed to provide Plaintiff and
5 other non-exempt employees with a full 30-minute uninterrupted, meal period when working a
6 shift in excess of 5.0 hours. Because Plaintiff and other non-exempt employees were paid solely
7 based on number of units they completed each week, Defendants encouraged Plaintiff and other
8 non-exempt employees to spend less than 30 minutes on their meal period or forgo their meal
9 people altogether. When Plaintiff worked shifts in excess of 10.0 hours, Plaintiff was not provided
10 a second meal period due to Defendants' meal period policies/practices which do not provide a
11 second meal period for shifts in excess of 10.0 hours. As a result of this practice, Defendants
12 failed to provide Plaintiff and other non-exempt employees with all lawful meal periods to which
13 they were entitled. Despite Defendants' failure to provide Plaintiff and other non-exempt
14 employees with all lawful meal periods, Defendants failed to provide Plaintiff and other non-
15 exempt employees with an additional hour of premium pay for each workday in which a meal
16 period violation occurred, as required by Labor Code § 226.7.

17 13. During at least a portion of the relevant time period, Defendants failed to
18 separately compensate Plaintiff or other non-exempt employees paid on a piece-rate basis for rest
19 periods, as required by *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 ("under
20 the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be
21 separately compensated in a piece-rate system."); *see also* Labor Code § 226.2 (requiring
22 employees who are compensated on a piece-rate basis to be separately compensated for rest
23 periods at the higher of the minimum wage or the average hourly rate of pay during the
24 workweek). Like above, Defendants also encouraged Plaintiff and other non-exempt employees
25 to shorten or skip any rest periods throughout the workday in order to increase piece-rate
26 production. Defendants also failed to authorize and permit Plaintiff and other non-exempt
27 employees to take all third, duty-free 10-minute rest period when working a shift in excess of 10.0
28 hours. As of result of Defendants' unlawful rest period policies/practices, Defendants are liable

for rest period penalties for their failure to authorize and permit Plaintiff and other non-exempt employees paid on a piece-rate basis to take paid rest periods.

14. As a result of Defendants' failure to pay all minimum wages, overtime wages, and meal and rest period premium wages, Defendants maintained inaccurate payroll records, issued inaccurate wage statements and failed to pay all final wages to Plaintiff and other non-exempt employees upon their separation of employment. Additionally, Defendants' wage statements are facially deficient because they do not include the number of piece-rate units earned as well as any applicable piece rate, they lack the address of the legal entity that is the employer, and they fail to include the applicable hourly rate in effect when Plaintiff was paid on an hourly basis, all in violation of Labor Code § 226(a).

CLASS ACTION ALLEGATIONS

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

- a. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who, at any time between 4 years prior to the date of this filing and the present, worked more than 8 hours per day and/or 40 hours per week and were subject to Defendants' timekeeping policies/practices.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who, at any time between 4 years prior to the date of this filing and the present, performed work that was compensated on a piece-rate basis.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who, at any time between 4 years prior to the date of this filing and the present, (1) worked at least one shift in excess of 5.0 hours without a recorded meal period of at least 30-minutes commencing before the end of the fifth hour of work; and/or (2) worked at least one shift in excess of 10.0 hours without a recorded second meal period of at least 30-minutes commencing before the end of the tenth hour of work.

- 1 d. The Rest Period Class consists of all of Defendants' current and former non-
2 exempt employees in California who, at any time between 4 years prior to the date
3 of this filing and the present, (1) worked at least one shift in excess of 3.5 hours
4 while performing work that was compensated on a piece-rate basis; and/or
5 (2) worked at least one shift in excess of 10.0 hours.
- 6 e. The Waiting Time Class consists of all members of the Minimum Wage Class,
7 Overtime Class, Meal Period Class, and/or Rest Period Class who separated their
8 employment with Defendants on or after 3 years prior to the date of this filing.
- 9 f. The Wage Statement Class consists of all members of the Minimum Wage Class,
10 Overtime Class, Meal Period Class, and/or Rest Period Class who, at any time
11 between 1 year prior to the date of this filing and the present, received a wage
12 statement from Defendants.

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

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

- 22 i. Whether Defendants violated the applicable Labor Code provisions, including but
23 not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to
24 perform work and not paying for said work in accordance with the overtime laws
25 of the State of California.
- 26 ii. Whether Defendants paid all minimum wages owed for all hours worked to
27 members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194,
28 1194.2, and 1197;

- 1 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
2 properly compensate members of the Overtime Class and/or Minimum Wage
3 class;
4 iv. Whether Defendants provided all legal compliant meal periods to members of the
5 Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
6 v. Whether Defendants authorized and permitted all lawful rest periods to members
7 of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
8 vi. Whether Defendants correctly paid meal period premium payments for non-
9 compliant meal periods pursuant to Labor Code § 226.7;
10 vii. Whether Defendants correctly compensated employees for rest periods and other
11 non-productive time pursuant to Labor Code § 226.2;
12 viii. Whether Defendants failed to pay all final wages to former employees pursuant to
13 Labor Code §§ 201-203; and
14 ix. Whether Defendants furnished legally complaint wage statements to members of
15 the Wage Statement Class pursuant to Labor Code § 226.

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

24 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
25 Defendants employed Plaintiff as a non-exempt employee in California during the statute of
26 limitations periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like
27 the members of the Classes, was paid on a piece-rate basis, not compensated for overtime hours,
28 nonproductive time, rest periods, was not provided legally compliant meal and rest periods, and

1 was furnished with inaccurate and incomplete wage statements.

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

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

1 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
2 individual prosecution considering all of the concomitant costs and expenses attending thereto.
3 As such, the Classes (as defined herein) are maintainable under § 382 of the Code of Civil
4 Procedure.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

13 24. At all times relevant herein, Defendants were required to properly pay Plaintiff
14 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
15 Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee
16 “one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess
17 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek.

18 25. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
19 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
20 Class at one and one-half times their regular rate of pay for such hours.

21 26. The foregoing policies and practices are unlawful and create entitlement to
22 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
23 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
24 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
25 16, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

28. 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.

29. At all relevant times herein, Defendants failed to conform their 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.

30. 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.

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

32. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and

1 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
2 1194, 1197, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their non-exempt employees in California,
9 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
10 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10, for the
11 reasons set forth in the General Factual Allegations and Class Definitions sections of this
12 Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium
13 pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in
14 accordance with California Labor Code §§ 226.7 and 512.

15 35. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
17 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Code of Civil Procedure
18 § 1021.5.

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

23 37. Wage Order 16, § 11 and Labor Code §§ 226.7, 516 and 558 establish the right of
24 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
25 period worked, or major fraction thereof. Further, Labor Code § 226.2 requires employees who
26 are compensated on a piece-rate basis to be separately compensated for rest periods.

27 38. As alleged herein, and due to Defendants' unlawful rest period policies and/or
28 practices, Defendants did not authorize and permit members of the Rest Period Class to take the

1 paid rest periods to which they were legally entitled. Despite Defendants' violations, Defendants
2 have not paid an additional hour of pay to Plaintiff and members of the Rest Period Class at their
3 respective regular rates of pay for each violation in accordance with Labor Code § 226.7.

4 39. The foregoing policies and practices are unlawful and create an entitlement to
5 recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount
6 of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
7 costs of suit according to Labor Code §§ 226.7, 516, and 558, Wage Order 16, and Code of Civil
8 Procedure § 1021.5.

9 **FIFTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(AGAINST ALL DEFENDANTS)**

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

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

19 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
21 at the time of their separation including, among other things unpaid overtime and minimum wages
22 as well as unpaid meal and rest period premium wages. Further, Plaintiff is informed and believes,
23 and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue
24 to fail to pay members of the Waiting Time Class all earned wages at the end of employment in
25 a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
26 pay all final wages was willful within the meaning of Labor Code § 203.

27 43. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
28 Time Class all earned wages upon separation from employment results in a continued payment

1 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
2 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
3 plus reasonable attorneys' fees and costs of suit.

4 **SIXTH CAUSE OF ACTION**

5 **WAGE STATEMENT PENALTIES**

6 **(AGAINST ALL DEFENDANTS)**

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

8 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
10 and the Wage Statement Class with accurate and complete itemized wage statements that
11 included, among other requirements, all minimum and overtime wages owed, all meal and rest
12 period premium wages earned, as well as the number of piece-rate units earned and any applicable
13 piece rate, all in violation of Labor Code § 226.

14 46. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
15 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
16 to, among other things, the non-payment of all minimum and overtime wages owed, all meal and
17 rest period premium wages, and deprived them of the information necessary to identify the
18 discrepancies in Defendants' reported data.

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

23 **SEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(AGAINST ALL DEFENDANTS)**

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

27 49. Defendants have engaged and continue to engage in unfair and/or unlawful
28 business practices in California in violation of California Business and Professions Code § 17200,

1 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages owed, all meal
2 and rest period premium wages, and by knowingly failing to provide accurate and complete wage
3 statements.

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

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

13 52. The acts complained of herein occurred within the four years immediately
14 preceding the filing of the Complaint in this action.

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

20 **EIGHTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(AGAINST ALL DEFENDANTS)**

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

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

1 according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to:
2 (1) \$100.00 for each initial violation of failing to pay each employee; (2) \$50.00 for each initial
3 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
4 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
5 initial violation; and/or (5) \$100.00 for each initial violation per employee per pay period for
6 those violations of the Labor Code for which no civil penalty is specifically provided, based on
7 the following Labor Code violations:

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

employees in violation of Labor Code §§ 558, 1174.

56. On June 29, 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 55 (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 the administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

57. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between June 29, 2021, and the present.

58. 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.

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

1 6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code
2 §§ 226.7, 512 and 558;

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

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

7 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code
8 §§ 226 *et seq.* and 246;

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

13 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
15 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation of failing to
16 pay each employee; (2) \$50.00 for each initial violation pursuant to Labor Code § 558 per
17 employee per pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1
18 per employee per pay period; (4) \$250.00 for each initial violation; and/or (5) \$100.00 for each
19 initial violation per employee per pay period for those violations of the Labor Code for which no
20 civil penalty is specifically provided, based on the violations of Labor Code sections identified in
21 Paragraph 55 (a)-(h) above;

22 12. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6
23 and Civil Code §§ 3287 and 3289;

24 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
25 §§ 218.5, 226(e)(1), 1194(a), 2699(g)(1), and Code of Civil Procedure § 1021.5; and

26 ///

27 ///

28 ///

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

2
3 Dated: September 6, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

4 By:


Fletcher W. Schmidt
Attorney for Plaintiff

5
6 **DEMAND FOR JURY TRIAL**

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

8
9 Dated: September 6, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

10 By:


Fletcher W. Schmidt
Attorney for Plaintiff

PROOF OF SERVICE

Michael Kotcherha v. Del's Flooring Contractors, Inc.
Riverside County Superior Court Case No. CVRI2202654

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 September 6, 2022, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Del's Flooring Contractors, Inc.
c/o Adelbert Jay Bernardi
42120 State St.
Palm Desert, CA 92211

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I caused a true and correct copy the document(s) described above to be enclosed 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 September 6, 2022, at El Segundo, California.


Jonathan Ramirez