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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 25 2022

BY



DEPUTY

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RAFAEL VELOZ REYES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

RAFAEL VELOZ REYES, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

THERMO POWER INDUSTRIES, a
California corporation; and DOES 1
through 100,

Defendants.

Case No.: CIVSB2212220

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);
- (5) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
- (6) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);
- (7) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);
- (8) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND
- (9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

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**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Rafael Veloz Reyes (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against; Thermo Power Industries, a California corporation; and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802; and Industrial Welfare Commission Wage
10 Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of San Bernardino. Defendants own, maintain offices, transact business, have agent(s)
18 within the County of San Bernardino, and/or otherwise are found within the County of San
19 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
20 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. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and

2802; California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 16, which sets employment standards for the Construction Industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by performing construction work in California and the greater United States, and employed Plaintiff and other, similarly-situated non-exempt employees within San Bernardino County and the state of California and, therefore, were (and are) doing business in San Bernardino County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to 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 to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

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

7. At all 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. Plaintiff commenced employment with Defendants as a non-exempt employee as
5 a Mechanic Assistant from approximately July of 2018 until his separation of employment on
6 approximately September 3, 2021. Plaintiff worked a schedule that varied depending on the needs
7 of the business and the project that he and other non-exempt employees were tasked with working
8 on. Plaintiff and other non-exempt employees worked all over the country in different cities and
9 states, installing hot and cold insulation for Defendants' various customers. Generally, once
10 tasked with a project, Plaintiff generally worked 7 days a week. He would work 6:00 a.m. until
11 6:00 p.m. Monday through Saturday, and Sunday from 6:00 a.m. until 2:30 p.m., however since
12 the recording of his hours was controlled by his supervisors, he was only credited with the hours
13 scheduled per week regardless of the actual amount of hours he worked due to Defendants
14 fraudulent timekeeping policies/practice which sought to deny overtime compensation to Plaintiff
15 and the other non-exempt employees.

16 **Off-The-Clock/Overtime**

17 10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff was
18 not paid for all hours worked due to Defendants' failures to properly account for all hours that
19 Plaintiff and other non-exempt employees actually worked. Specifically, Defendants paid Plaintiff
20 and other non-exempt employees for their scheduled hours instead of properly keeping track of
21 their time, as evidenced by the fact that each of Plaintiff's wage statements indicate payment for
22 hours worked in strictly whole numbers (i.e. 30.0 hours, 40.0 hours, etc.), demonstrating that
23 Defendants were either not properly keeping track of the actual time worked, or unlawfully
24 rounding Plaintiff and other non-exempt employees hours down to a whole number and not
25 compensating them for any of the additional time they necessarily would have spent working in a
26 given shift. Additionally, Plaintiff routinely worked in excess of forty hours per workweek but
27 did not receive overtime compensation equal to one and one-half times his regular rate of pay for
28 all overtime hours worked. Furthermore, despite frequently working in excess of 12 hours in a

1 given shift and being entitled to double time pay, Plaintiff and other non-exempt employees were
2 not ever compensated for double time hours as required by the Labor Code. Defendants, through
3 their fraudulent timekeeping practices have maintained a system that only compensates its
4 employees for weekly overtime hours worked in excess of 40 in a work week (to the extent that
5 their overtime hours were properly recorded) while failing to provide double time compensation
6 for those hours worked in excess of 12 in a day. Furthermore, despite working seven days a week,
7 Defendants failed to compensate Plaintiff and other non-exempt employees for the requisite double
8 time pay for the hours worked in excess of eight on their seventh consecutive day worked.
9 Consequently, due Defendants' unlawful timekeeping and payment policies and practices that
10 failed to properly compensate for all hours worked, including overtime & double time hours
11 worked, Plaintiff and the other non-exempt employees have been deprived of all required
12 minimum and overtime wages earned.

13 **Meal Period Violations**

14 11. During Plaintiff's employment with Defendants, Plaintiff was not provided all
15 required meal periods due to Defendants' meal period policies/practices which fail to provide
16 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing. On
17 those occasions that they were afforded a first meal period, it was often not timely. Furthermore,
18 there were countless occasions where Plaintiff and other non-exempt employees at the insistence
19 of their supervisors would have their meal periods cut short, and sometimes be forced to skip
20 them entirely, in order to meet the intense deadlines imposed on them by Defendants. Defendants
21 did not actually track the time of Plaintiff and other non-exempt employees' meal periods.
22 Furthermore, Plaintiff and other non-exempt employees faced intense pressure to meet tight
23 deadlines set by Defendants which in practice disincentivized their exercise of legally compliant
24 meal periods. Defendants were aware, or reasonably should have been aware, that this off-the-
25 clock work was being performed but failed to compensate Plaintiff and the other non-exempt
26 employees for such off-the-clock work, most of which constituted overtime hours worked.

27 12. In addition to Defendants' failure to provide Plaintiff and other non-exempt
28 employees with all legally required first meal periods, Defendants also failed to provide second

meal periods to Plaintiff and other non-exempt employees when they worked shifts in excess of 10.0 hours. At no point during Plaintiff's tenure with Defendants was he ever afforded a second meal period despite working in excess of 10.0 nearly every shift that he and other non-exempt employees performed work for Defendants.

13. On those occasions when Plaintiff and other non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments required by Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

Rest Periods Violations

14. Plaintiff and the putative class were also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices, which fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Plaintiff and the other non-exempt employees were generally only afforded one rest period per shift, if at all, despite working in excess of 12 hours nearly every shift. Instead, due to the prevailing attitude as expressed by management that employees should be working at all times while on-the-clock (because of intense pressure to meet deadlines), Plaintiff and other non-exempt employees would be required to work through the entirety of their shifts without being afforded any rest periods outside of the single rest period they were inconsistently afforded. Plaintiff was constantly required to attend to his work duties, without interruption of breaks, and therefore, Defendants failed to authorize and permit Plaintiff to take off-duty rest periods that were completely free of employer control, in violation of California law. Despite working at least 12 hours per shift, and thus being entitled to 3 rest periods per shift, Plaintiff and other non-exempt employees would only receive their first rest period and be forced to forego the second and third rest periods to which they were legally entitled.

15. As a result of these policies/practices, Defendants failed to authorize and permit Plaintiff and other non-exempt employees to exercise the use of off-duty rest periods that were completely free of employer control, in violation of California law. On those occasions when Plaintiff and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate them with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Furthermore, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

Regular Rate of Pay

16. Plaintiff and other aggrieved employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Despite Defendants' payment of overtime pay to Plaintiff and other aggrieved employees, Defendants failed to properly calculate the regular rate of pay thereby causing Plaintiff and other aggrieved employees to be underpaid all required overtime wages. Specifically, Defendants paid Plaintiff and other non-exempt employees with non-discretionary per diem payments and bonuses (hereinafter referred to as "Incentive Pay") which are not excludable from the regular rate of pay. Despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt employees, Defendants failed to properly include them when calculating their respective regular rates of pay, thereby causing Plaintiff and other non-exempt employees to be underpaid all required overtime wages. As such, Defendants failed to properly account for all forms of compensation for purposes of calculating the regular overtime rate of pay for its non-exempt employees, causing a systematic underpayment of wages to Plaintiff and other aggrieved employees.

Reimbursements

17. Defendants failed to adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including failing to reimburse for necessary tools such as scissors,

1 rulers, tapes, drills, pliers, harnesses, screwdrivers, and steel toed boots. In addition, Plaintiff and
2 the putative class would perform the vast majority of their work duties on their personal cellular
3 phones on behalf of Defendants. While at some point in Plaintiff's employment, he began
4 receiving a \$20 per month reimbursement for the use of his personal cellular phone, these
5 payments were not disbursed throughout the entirety of the class period, and to the extent that
6 they represented reimbursement for cellular phone use, it was grossly under representative of the
7 actual expenses incurred by Plaintiff and other non-exempt employees for cellular phone use for
8 business purposes. Finally, Defendants required Plaintiff and other non-exempt employees to
9 incur expenses related to meals and lodging on those occasions where they were worked to work
10 in different cities/states for extended periods of time but did not adequately reimburse them for
11 all necessary expenses that they incurred, including but not limited to, hotel room and meal
12 expenses.

13 **Inaccurate Wage Statements**

14 18. As a result of Defendants' failure to pay all minimum wages, overtime wages,
15 meal and rest period premium wages, Defendants maintained inaccurate payroll records and
16 issued inaccurate wage statements.

17 **Failure to Timely Pay All Final Wages**

18 19. As a further result of Defendants' failure to pay all minimum wages, overtime
19 wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to
20 Plaintiff upon his separation of employment from Defendants.

21 **CLASS ACTION ALLEGATIONS**

22 20. **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 Minimum Wage Class consists of all Defendants' current and former non-
25 exempt employees in California who were subject to Defendants' timekeeping
26 systems and/or practices, during the four years immediately preceding the filing
27 of the Complaint through the present.
- 28 b. The Overtime Class consists of all Defendants' current and former non-exempt

employees in California who worked more than (i) eight (8) hours per day; and/or (ii) twelve (12) hours per day; and/or (iii) forty (40) hours per week and were subject to Defendants' timekeeping systems and/or practices during the four years immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: worked at least one shift: (i) in excess of 5.0 hours; and/or (ii) in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present;

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of the Complaint through the present;

e. The Employee Expense Class consists of all Defendants' current and former non-exempt employees in California who: (i) were not reimbursed for necessary tools and equipment; and/or (ii) cellular phone expenses necessarily incurred in the performance of their duties; and/or (iii) hotel and food expenses during the four years immediately preceding the filing of the Complaint through the present;

f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and Rest Period Class, who received a wage statement during the one year immediately preceding the filing of the Complaint through the present; and

g. The Waiting Time Class consists of all Defendants' formerly employed members of the Minimum Wage Class, the Overtime Class, Meal Period Class, and Rest Period Class, who separated from employment during the three years immediately preceding the filing of the Complaint through the present.

21. **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 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes

number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **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. Those common questions include, without limitation:

- i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- ii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- iii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 1194 by requiring work, including overtime work, and not paying for said work in accordance with the laws of the state of California;
- iv. Whether Defendants failed to properly include all forms of compensation when computing the respective regular rate for members of the Overtime Class;
- v. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vi. 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;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

23. **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' uniform timekeeping, meal and rest period, non-reimbursement, wage statement, and payment of final wages policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid for all hours worked, provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and rest periods, was not reimbursed for all necessary business expenses, did not receive accurate and itemized wage statements, and was not paid all wages owed at time of separation of employment from Defendants.

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

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff

1 and members of the Classes make the class action format a particularly efficient and appropriate
2 procedure to redress the violations alleged herein. If each employee were required to file an
3 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
4 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
5 their vastly superior financial and legal resources. Moreover, requiring each member of the
6 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
7 employees who would be disinclined to file an action against their former and/or current employer
8 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
9 employment. Further, the prosecution of separate actions by the individual class members, even
10 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would
12 establish potentially incompatible standards of conduct for Defendants; and/or legal
13 determinations with respect to individual class members which would, as a practical matter, be
14 dispositive of the interest of the other class members not parties to adjudications or which would
15 substantially impair or impede the ability of the class members to protect their interests. Further,
16 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
17 individual prosecution considering all of the concomitant costs and expenses attending thereto.
18 As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil
19 Procedure.

20 **FIRST CAUSE OF ACTION**

21 **MINIMUM WAGE VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

24 28. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
25 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
26 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
27 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
28 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid

1 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
2 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
3 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
4 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
5 and Wage Order 16.

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

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

16 31. Defendants' practice and uniform administration of corporate policy regarding
17 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
18 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
19 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
20 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
21 Civil Procedure § 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME WAGES**

24 **(AGAINST ALL DEFENDANTS)**

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

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

34. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours or two times their regular rate of pay for double time hours worked.

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

37. 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, § 11. Despite Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

38. As a result, Defendants are responsible for paying premium compensation for meal

1 period violations including interest thereon, as well as statutory penalties, civil penalties, and
2 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Civil Code §§
3 3287(b) and 3289.

4 **FOURTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 40. Wage Order 16, § 12 and California Labor Code §§ 226.7 and 516 establish the
9 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
10 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

11 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
12 of the Rest Period Class to take all required rest periods.

13 42. The foregoing violations create an entitlement to recovery by Plaintiff and
14 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
15 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
16 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **(AGAINST ALL DEFENDANTS)**

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

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

25 45. Due to Defendants’ unlawful policy and practice of requiring employees to
26 purchase and maintain their own necessary tools and equipment in the performance of their job
27 duties, along with failing to adequately reimburse for the use of their cellular phones in the
28 performance of their job duties and failing to reimburse for all hotel room and food expenditures

on those occasions where they were made to work offsite, Defendants have violated Labor Code § 2802.

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

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff and the Wage Statement Class with accurate, itemized wage statements that included, among other requirements, accurate total gross wages earned, meal and rest period premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

50. Defendants' failure to furnish Plaintiff and the members of the Wage Statement Class with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all of their earned wages, meal and rest period premiums, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

51. Defendants' failures created an entitlement to Plaintiff and members of the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226, including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

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1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

11 54. Defendants failed to timely pay Plaintiff all of his final wages at the time of
12 termination, which include, among other things, underpaid minimum and overtime wages, and
13 meal and rest period premium wages. Further, Plaintiff is informed and believes, and based
14 thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay
15 members of the Waiting Time Class all earned wages at the end of employment in a timely manner
16 pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final
17 wages was willful within the meaning of Labor Code § 203.

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

23 **EIGHTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(AGAINST ALL DEFENDANTS)**

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

27 57. 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 overtime and minimum wages, provide all
2 required meal periods and failing to authorize and permit all required rest periods, and failing to
3 pay meal and rest period premium wage payments, failing to reimburse all necessary business
4 expenses, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay
5 Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

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

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

15 60. The acts complained of herein occurred within the last four years immediately
16 preceding the filing of the Complaint in this action.

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

22 **NINTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **(AGAINST ALL DEFENDANTS)**

25 62. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
26 fully set forth herein.

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

1 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
2 employees, brings this representative action against Defendants to recover the civil penalties due
3 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
4 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
5 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
6 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
7 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
8 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
9 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
10 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
11 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
12 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for which
14 no civil penalty is specifically provided, based on the following Labor Code violations:

- 15 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
16 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
17 1182.12, 1194, 1194.2, 1197, and 1198;
- 18 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
19 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
20 1194, and 1198;
- 21 c. Failing to authorize and permit all legally required rest periods, and failure to
22 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
23 aggrieved employees at the regular rate of compensation in violation of Labor
24 Code §§ 226.7, 516, 558, and 1198;
- 25 d. Failing to provide all legally required meal periods, and failure to pay meal
26 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
27 employees at the regular rate of compensation in violation of Labor Code §§
28 226.7, 512, 558, and 1198;
- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other

aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to permit and authorize Plaintiff and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- j. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Reyes and other non-exempt employees in violation of Labor Code § 2810.5;
- k. Failing to compensate Plaintiff and other aggrieved employees at least once every week on a business day designated in advance and including all wages earned up to and including the fourth day before such payday in violation of Labor Code § 205; and
- l. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

64. On June 25, 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 violations of the California Labor Code identified in Paragraph 63 (a)-(l). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

65. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly 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 receive under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 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 compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;
9. Upon the Sixth Cause of Action, for actual damages, statutory and civil penalties pursuant to Labor Code § 226, *et seq.*;
10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 203.;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*

1 *seq.;*

2 12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each
3 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
4 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
5 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
6 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
7 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
8 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
9 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
10 each initial violation and \$200 for each subsequent violation per employee per pay period for the
11 violations of the Labor Code Sections cited in Labor Code § 2699.5.

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

14 14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
15 Procedure § 1021.5 and all other applicable statutes; and

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

17
18 Dated: August 24, 2022

Respectfully submitted,
STANBURY BROWN LAW, PC

19
20 By:



21 Daniel J. Brown
22 Attorneys for Plaintiff

23 **DEMAND FOR JURY TRIAL**

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

25 Dated: August 24, 2022

Respectfully submitted,
STANBURY BROWN LAW, PC

26 By:



27 Daniel J. Brown
28 Attorneys for Plaintiff

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90291

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

Executed on August 24, 2022 at Venice, California

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Daniel J. Brown

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SERVICE LIST

G. Keith Debrucky
10570 Humbolt St.
Los Alamitos, CA 90720

Registered Agent for Service of Process for Defendant Thermo Power Industries