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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SEP 26 2022

BY:

V. Taylor
V. Taylor, Deputy

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

ANTONIO SEGOVIA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

CJ LOGISTICS AMERICA, LLC, a Delaware
limited liability company; DSC LOGISTICS,
INC., an Indiana Corporation; and DOES 1
through 100,

Defendants.

CASE NO. CIVSB2215492

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 558, 1182.12,
1194, 1194.2, 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 558);
- (5) **WAGE STATEMENT PENALTIES**
(LABOR CODE § 226 *et seq.*);
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Antonio Segovia (“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 CJ Logistics America, LLC, a Delaware limited liability
4 company; DSC Logistics, Inc., an Indiana Corporation; and DOES 1 to 100, inclusive
5 (collectively “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

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

15 **VENUE**

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

21 **PARTIES**

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

1 1198, and 2698 *et seq.*, and Wage Order 9, which sets employment standards for the transportation
2 (including warehousing and storage) industry.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the
4 applicable statute of limitations for each cause of action pled herein and continuing to the present,
5 Defendants engage in and continue to engage in warehouse and fulfillment services, and
6 employed Plaintiff and other similarly-situated non-exempt employees within San Bernardino
7 County and the State of California and, therefore, were (and are) doing business in San Bernardino
8 County and the State of California.

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

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

19 7. At all relevant times, each of said Defendants participated in the doing of the acts
20 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
21 and each of them, were the agents, servants, and employees of each and every one of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
23 within the course and scope of said agency and employment. Defendants, and each of them,
24 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions
25 complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 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 is currently employed by Defendants as a non-exempt employee and has
5 been employed by Defendants at all relevant time during the applicable statute of limitations
6 periods. During his employment with Defendants, Plaintiff has worked as a customer specialist
7 as well as a forklift operator in one of Defendants' warehouses in San Bernardino, California.

8 10. Defendants failed to provide Plaintiff and other non-exempt employees with all
9 legally compliant meal periods due to Defendants' meal period policies/practices, which have
10 frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
11 and missed meal periods. Specifically, Plaintiff's and other non-exempt employees' meal periods
12 frequently commenced after the completion of five hours of work as Plaintiff and other non-
13 exempt employees would need to complete certain job duties. On those occasions when Plaintiff
14 was not provided with all legally-compliant meal periods to which he was entitled, Defendants
15 failed to compensate Plaintiff with the required meal period premium(s) for each workday there
16 was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief,
17 Defendants maintained no policy or procedure for making payments for meal period premium
18 payments for meal periods that were provided late as required by Labor Code § 226.7, in the event
19 that a legally-compliant meal period was not provided to their non-exempt employees.

20 11. Defendants have also failed to authorize and permit all legally required rest periods
21 to Plaintiff and their other non-exempt employees. Plaintiff and other non-exempt employees
22 were often required to work through their rest periods as a result of their work duties and
23 Defendants' failure to schedule rest periods for their non-exempt employees. Despite failing to
24 authorize and permit Plaintiff and other non-exempt employees to take all rest periods to which
25 they are entitled, upon information and belief, Defendants maintained no mechanism for the
26 payment of rest period premium payments as required by Labor Code section 226.7.

27 12. Throughout Plaintiff's employment with Defendants, Defendants utilized a
28 timekeeping system which resulted in Plaintiff and other non-exempt employees not being

1 compensated for all hours actually worked. Specifically, following the COVID-19 pandemic,
2 Defendants would require Plaintiff and their other non-exempt employees to have their
3 temperature taken prior to clocking in for their shift at Defendants' work facilities, such that the
4 time spent performing this work-related duty was done off-the-clock and without compensation.
5 As a result, Plaintiff and other non-exempt employees were not compensated for all required
6 minimum and overtime wages.

7 13. Defendants also failed to pay Plaintiff and other non-exempt employees all wages
8 for sick pay owed to them, as Defendants paid sick pay payments at an employee's base rate of
9 pay, as opposed to their regular rate of pay. Because Plaintiff and other non-exempt employees
10 received various forms of non-discretionary compensation that were required to be included in
11 their regular rate of pay, but were not, Plaintiff and other non-exempt employees have not been
12 paid all sick pay wages owed to them.

13 14. As a result of Defendants' failure to pay all minimum and overtime wages, failure
14 to pay all meal and rest period premium wages, and failure to pay all sick pay wages, Defendants
15 maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other
16 non-exempt employees.

17 **CLASS ACTION ALLEGATIONS**

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

- 20 a. The Minimum Wage Class consists of all of Defendants' current and former non-
21 exempt employees in California who were subject to Defendants' timekeeping
22 policies and/or practices, during the four years immediately preceding the filing of
23 this action through the present.
- 24 b. The Overtime Class consists of all of Defendants' current and former non-exempt
25 employees in California who worked more than eight (8) hours per day and/or
26 forty (40) hours per week and were subject to Defendants' timekeeping policies
27 and/or practices, during the four years immediately preceding the filing of this
28 action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of this action through the present.

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

e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class and/or Rest Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;

ii. Whether Defendants violated the applicable Labor Code provisions, including but not limited to, sections 510 and 1194 by requiring members of the Overtime Class to perform work and not paying for said work in accordance with the overtime laws of the State of California;

- 1 iii. Whether Defendant's 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 legally compliant meal periods to members of
5 the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- 6 v. Whether Defendants authorized and permitted all legally compliant rest periods to
7 members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- 8 vi. Whether Defendants correctly paid meal and/or rest period premium payments for
9 non-compliant meal and/or rest periods pursuant to Labor Code section 226.7; and
- 10 vii. Whether Defendants furnished legally compliant wage statements to members of
11 the Wage Statement Class pursuant to Labor Code section 226.

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

19 19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
20 Plaintiff was employed by Defendants as a non-exempt employee in California during the
21 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
22 herein, Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages
23 owed due to Defendants' timekeeping policies/practices, was not provided all legally compliant
24 meal periods, was not authorized and permitted to take all legally compliant rest periods, did not
25 receive premium pay for non-compliant meal and/or rest periods, and was not provided with
26 accurate, compliant, itemized wage statements.

27 20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
28 to represent fairly and adequately the interests of the members of the Classes. Moreover,

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
2 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
3 hour class actions in state and federal courts in the past and are committed to vigorously
4 prosecuting this action on behalf of the members of the Classes.

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

As such, the Classes (as defined herein) are maintainable under § 382 of the Code of Civil Procedure.

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

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

23. Wage Order 9, § 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.

24. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9.

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

26. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of 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 9.

1 27. The foregoing practices and policies are unlawful and create an entitlement to
2 recovery by Plaintiff and members of the Minimum Wage Class in a civil action for unpaid
3 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
4 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
5 1194, 1197, and 1198, Wage Order 9, and Code of Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

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

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

14 30. At all times relevant herein, Defendants were required to properly compensate
15 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
16 Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an
17 employee "one and one-half (1½) times the employee's regular rate of pay" for all hours worked
18 in excess of eight (8) hours per workday and/or in excess of 40 hours of work in the workweek.
19 Wage Order 9, § 3 also requires an employer to pay an employee double the employee's regular
20 rate of pay for work in excess of twelve hours each workday and/or for work in excess of eight
21 hours on the seventh consecutive day of work in the workweek.

22 31. At all times relevant herein, Defendants caused Plaintiff and members of the
23 Overtime Class to work overtime hours, but failed to credit these employees with all overtime
24 hours actually worked, and/or did not compensate Plaintiff or members of the Overtime Class at
25 one and one-half times their regular rate of pay for all overtime hours worked or at double the
26 regular rate of pay for all double-time hours worked.

27 32. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of

overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198, Wage Order 9, Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

34. 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 9, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

35. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, Code of Civil Procedure § 1021.5; and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

37. Wage Order 9, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit Plaintiffs and members of the Rest Period Class to take all legally compliant rest periods, Defendants did not pay these individuals an additional hour of pay at their respective regular rate

1 for the rest periods that they failed to authorize and permit them to take, as required by Labor
2 Code § 226.7.

3 38. Defendants' policies and practices described herein are unlawful and create an
4 entitlement to recovery by Plaintiffs and members of the Rest Period Class in a civil action for
5 the unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
6 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
7 516, 558, Wage Order 9, Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289..

8 **FIFTH CAUSE OF ACTION**

9 **WAGE STATEMENT VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(AGAINST ALL DEFENDANTS)**

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

28 44. Defendants have engaged and continue to engage in unfair and/or unlawful

business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages owed, all meal and rest period premium wages, and failing to issue accurate itemized wage statements.

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

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

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

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

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

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

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

- 12 a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-
13 time compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and
14 1198;
- 15 b. Failing to pay Plaintiff and other aggrieved employees at least the statutory
16 minimum wages for all hours worked in violations of Labor Code §§ 1182.12,
17 1194, 1194.2, 1197 and 1198;
- 18 c. Failing to provide meal periods as required by law and failing to pay meal period
19 premiums to Plaintiff and other aggrieved employees at the employees' respective
20 regular rates of compensation for meal period violations in violation of Labor Code
21 §§ 226.7, 512, 558, and 1198;
- 22 d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all
23 lawful rest periods and failing to pay rest period premiums to Plaintiff and other
24 aggrieved employees at the employees' respective regular rates of compensation
25 for rest period violations in violation of Labor Code §§ 226.7, 516, 558 and 1198;
- 26 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
27 complete itemized wage statements in violation of Labor Code § 226 *et seq.* and
28 246; and

///

1 f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
2 employees in violation of Labor Code §§ 1174 and 1198.

3 51. On July 19, 2022, Plaintiff notified Defendants via certified mail, and notified the
4 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
5 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
6 under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor
7 Code identified in Paragraph 50 (a)-(f). Now that sixty-five days have passed from Plaintiff
8 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
9 that it intends to investigate the violations, Plaintiff has exhausted the administrative requirements
10 for bringing a claim under the Private Attorneys General Act with respect to these violations.

11 52. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
12 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
13 exempt employees who worked for Defendants in California between July 19, 2021, and the
14 present.

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

19 **PRAYER**

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

- 22 1. For an order certifying the proposed Classes;
- 23 2. For an order appointing Plaintiff as representative of the Classes;
- 24 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 25 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
26 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
27 1197;
- 28 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 statutory penalties pursuant to Labor Code § 226 *et seq.*;

9. Upon the Sixth 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 seq.*;

10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation pursuant and \$250.00 for each subsequent violation to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections identified in Paragraph 50 (a)-(f) above;

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

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, 2699 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

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3 Dated: September 26, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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8 **DEMAND FOR JURY TRIAL**

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

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11 Dated: September 26, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By:



Fletcher W. Schmidt
Attorneys for Plaintiff