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

SEP 19 2022

Michelle Munguia
BY Michelle Munguia DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE ESTRADA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOP-SHELF FIXTURES, LLC, a California
limited liability company; and DOES 1 through
100,

Defendants.

Case No. CIVSB2214983

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194 and 1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, and
558);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, and
558);
- (5) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226 *et seq.*);
- (6) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (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 Jose Estrada (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Defendants Top-Shelf Fixtures, LLC, a California limited liability company; and DOES
4 1 through 100, inclusive (collectively, “Defendants”), 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 Complaint for recovery of unpaid wages and penalties under Labor Code §§ 201-204, 226, 226.7,
9 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et. seq.*; California Business &
10 Professions Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order No. 1 (“Wage
11 Order 1”), in addition to seeking declaratory relief and restitution. This Complaint is brought
12 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 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 an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
24 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
25 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
26 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
27 to him by Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
28 1198, and 2698 *et. seq.*; Business and Professions Code Section 17200 *et seq.*, and Wage Order

1, which sets employment standards for the “Manufacturing Industry.”

4. Plaintiff is informed and believes, and based thereon alleges, that during the time period relevant to this action, Defendants did (and do) business by manufacturing and designing custom display fixtures.

5. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and were the employers of Plaintiff and of the members of the Classes (as defined in Paragraph 14).

6. Plaintiff does not know the true names, capacities, relationships, and/or the extent of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when their true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named Respondent is and was responsible in some way for the alleged wage-and-hour violations and other wrongful conduct that subjected Plaintiff and the Classes, as defined below, to the illegal employment practices, wrongs and injuries complained of herein. All references in this Complaint to “Defendants” shall be deemed to include all DOE Defendants.

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 acted within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Classes (as defined in Paragraph 14).

GENERAL FACTUAL ALLEGATIONS

9. Defendants employed Plaintiff as a non-exempt employee from approximately 2011 until approximately April 2022. Defendants are in the business of designing and manufacturing various shelving products, including wire shelving, retail fixtures, and front-end merchandisers. Plaintiff was typically scheduled to work a shift from 6:00 a.m. to 2:30 p.m., however, Plaintiff was occasionally scheduled to work a longer shift from 5:00 a.m. to 4:30 p.m.

10. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system which resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, upon information and belief, Defendants' daily practice was to ring a bell signaling the start of Plaintiff's and other non-exempt employees' shift at 6:00 a.m. Plaintiff and other non-exempt employees were expected to be at their assigned workstation at 6:00 a.m. when the bell rang signaling the start of the shift. To comply with this requirement, Plaintiff and other non-exempt employees regularly clocked in and began working prior to 6:00 a.m., to ensure they were at their assigned workstation when the bell rang at 6:00 a.m. Similarly, Defendants' daily practice was to ring a bell at 2:30 p.m. to signal the end of the work shift. Plaintiff and other non-exempt employees were not allowed to leave their workstations prior the bell ringing at 2:30 p.m. Upon information and belief, Defendants' timekeeping policies/practices did not compensate Plaintiff and other non-exempt employees for the time worked prior to the scheduled start time of 6:00 a.m., nor did Defendants compensate Plaintiff and other non-exempt employees for the time spent after the scheduled end time of 2:30 p.m. Defendants' timekeeping policies/practices were not even handed and have resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. Further, on occasions when Plaintiff worked over eight hours in a workday and/or forty hours in a workweek, Defendants' timekeeping policies/practices deprived him of additional overtime wages earned. Due to Defendants' timekeeping policies/practices that fail to compensate for all hours worked, Plaintiff and other non-exempt employees were not compensated for all required minimum and overtime wages.

11. Defendants also failed to provide Plaintiff and other non-exempt employees with

all legally compliant meal periods due to Defendants’ meal period policies/practices, which have resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. In addition, Defendants failed to provide Plaintiff and other non-exempt employees with second meal periods on shifts over 10.0 hours. During at least a portion of the relevant time period, Defendants did not require Plaintiff and other non-exempt employees to record their meal periods. Instead, upon information and belief, Defendants automatically deducted 30 minutes from the total hours worked for each shift worked regardless of whether the employee took a full 30-minute compliant meal period. On those occasions when Plaintiff was not provided with all legally-required meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums under Labor Code § 226.7 in the event a legally compliant meal period was not provided to their non-exempt employees.

12. Defendants have also failed to authorize and permit all required rest periods for Plaintiff and other non-exempt employees. Specifically, Plaintiff was not authorized and permitted to take separate rest periods throughout the workday and was only authorized and permitted a single 30-minute combined rest period at approximately 1:00 p.m. during his shift, in violation of California law. *See Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027 (holding that in a shift with a single meal period, the preferred schedule requires the provision of a rest period in the middle of each “work period” before and after the meal break, and that “a departure from the preferred schedule is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would be imposed on the employer by implementing the preferred schedule.”). Furthermore, despite working shifts in excess of 10.0 hours, Plaintiff was not authorized and permitted to take a third rest period, due to Defendants’ rest period policies/practices, which fail to authorize and permit all legally-required rest periods. Despite failing to authorize and permit Plaintiff and other non-exempt employees to take all rest periods to which they are entitled, upon information and belief, during at least a

portion of the relevant time period, Defendants maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7 and did not pay Plaintiff or other non-exempt employees any rest period premiums.

13. As a result of Defendants' failure to compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. As a further result of Defendants' failure to compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants failed to pay Plaintiff and other non-exempt employees all wages owed at the time of their separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

14. Class Definitions: Plaintiff brings this Complaint on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per week and were subject to Defendants' timekeeping policies 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 of Defendants' current and former non-exempt employees in California who (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint 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 of 3.5 hours or more,

during the four years immediately preceding the filing of the Complaint 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 have received a wage statement from Defendants during the one year immediately preceding the filing of the Complaint through the present.

f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who have separated their employment with Defendants during the three years immediately preceding the filing of the Complaint through the present.

15. **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 Classes number is in excess of fifty (50) individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

16. **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 to members of the Minimum Wage Class for all hours worked pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

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

iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime Class and Minimum Wage

Classes;

- iv. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants correctly paid meal period premium payments for non-compliant meal periods pursuant to Labor Code § 226.7;
- vi. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vii. Whether Defendants correctly paid rest period premium payments for non-compliant rest periods pursuant to Labor Code § 226.7;
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to Plaintiff and members of the Waiting Time Class at the time of their separation of employment were lawful.

17. **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 and fact set forth above are numerous and substantial and stem from Defendants' uniform policies and/or practices applicable to each individual class member including, but not limited to, Defendants' uniform timekeeping policies and/or practices, and meal and rest period policies and/or practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

18. **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 statutes of limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not properly paid minimum and overtime wages due to Defendants' timekeeping policies/practices, was not 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 for missed and/or non-compliant meal and rest periods, was not issued accurate itemized wage statements, and/or did not receive all final wages owed to him upon his separation of employment with Defendants.

19. **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.

20. **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 and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

**MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)**

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

22. Wage Order 1, § 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.

23. 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 1.

24. 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.

25. 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 1.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

29. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 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 workday and/or in excess of 40 hours of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class with one and one-half times their regular rate of pay for such hours.

30. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

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1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and members of the Wage Statement Class with accurate and complete, itemized wage statements
8 that included, among other requirements, all hours worked, total gross wages earned, all rates of
9 pay and corresponding number of hours worked, total net wages earned, and the correct name of
10 the legal entity that is the employer in violation of Labor Code § 226 *et seq.*

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

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

20 **SIXTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

22 **(AGAINST ALL DEFENDANTS)**

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

24 43. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
25 an employer to pay all wages immediately at the time of separation of employment in the event
26 the employer discharges the employee, or the employee provides at least 72 hours of notice of
27 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
28 to quit, said employee's wages become due and payable not later than 72 hours upon said

1 employee's last date of employment.

2 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
4 at their separation from employment, including minimum and overtime wages, and meal and rest
5 period premium wages.

6 45. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
7 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
8 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
9 to the requirements of Labor Code §§ 201-203.

10 46. Defendants' failure to pay all final wages was willful within the meaning of Labor
11 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
12 Time Class their earned wages upon separation from employment results in a continued payment
13 of wages up to thirty days from the time the wages were due.

14 47. Therefore, Plaintiff and members of the Waiting Time Class are entitled to
15 compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

16 **SEVENTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(AGAINST ALL DEFENDANTS)**

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

20 49. Defendants have engaged and continue to engage in unfair and/or unlawful
21 business practices in California in violation of Business & Professions Code § 17200 *et seq.*, by:
22 (a) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (b)
23 failing to pay Plaintiff and members of the Overtime Class all overtime wages; (c) failing to
24 provide Plaintiff and members of the Meal Period Class with all meal periods to which they are
25 entitled, and/or failing to pay them meal period premium payments; (d) failing to authorize and
26 permit all required duty-free rest periods to Plaintiff and members of the Rest Period Class, and/or
27 failing to pay them rest period premiums payments; (e) knowingly failing to furnish Plaintiff and
28 the Wage Statement Class with all accurate and complete, itemized wage statements in violation

of Labor Code § 226; and/or (f) failing to timely pay all wages owed upon separation to Plaintiff and members of the Waiting Time Class.

50. 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.

51. 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.

52. The acts complained of herein occurred within the last four years immediately preceding the filing of the Plaintiff's Complaint.

53. Plaintiff was compelled to retain the services of counsel to file this Complaint 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.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

55. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, is 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 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited

to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226, 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 following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned in violation Labor Code §§ 204, 510, 1194, and 1198;
- c. Failing to provide all legally required meal periods and by failing to pay meal period premiums to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods and by failing to pay rest period premiums to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code §§ 226 and 246;
- f. Failing to timely pay all final wages due to Plaintiff and other aggrieved former employees in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and

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

3 56. On or about July 14, 2022, Plaintiff notified Defendants via certified mail, and
4 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
5 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
6 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
7 California Labor Code identified in Paragraph 55 (a)-(h). Now that sixty-five days have passed
8 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
9 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
10 administrative requirements for bringing a claim under the Private Attorneys General Act with
11 respect to these violations.

12 57. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
13 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
14 exempt employees who worked for Defendants in California at any time between 178 days prior
15 to July 14, 2021, and the present.

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

20 **PRAYER**

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

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

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

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

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

9 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
10 Labor Code §§ 201- 203;

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

14 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
16 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
17 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
18 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
19 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
20 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
21 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
22 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226, and
23 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay
24 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
25 employee per pay period for those violations of the Labor Code for which no civil penalty is
26 specifically provided, based on the violations of Labor Code sections identified in Paragraph 55
27 (a)-(h) above.

28 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

2 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
3 §§ 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

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

5
6 Dated: September 19, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:


Paul K. Haines
Attorneys for Plaintiff

9
10 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: September 19, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:


Paul K. Haines
Attorneys for Plaintiff

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San Bernardino County Superior Court Case No. CIVSB2214983

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 19, 2022, I served the foregoing document(s) described as:

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

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

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) 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 19, 2022, at El Segundo, California.



Nestor Castillo