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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

JASON MENDEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

RAMSEY LATH & PLASTER, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22CV01808

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

- (1) **FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 1182.12,
1194, 1194.2, 1197, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (8) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*);**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jason Mendez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against Ramsey
3 Lath & Plaster, Inc., a California corporation; and Does 1 through 100, inclusive (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby bring this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission
10 Wage Order No. 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution.
11 This class action is brought pursuant to California Code of Civil Procedure section 382. This
12 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
13 amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*;
28 Business & Professions Code § 17200, *et seq.* (Unfair Competition); and Wage Order 16, which

1 sets employment standards for on-site occupations in the construction industry, including work
2 involving alteration, building, renovation, remodeling, improvement, and repair work.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as a construction company providing stucco, re-stucco, patching, plastering, and interior
6 repair services, and that they employed Plaintiff and other similarly situated non-exempt
7 employees within Santa Cruz County and the state of California.

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

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

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

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 Members (as defined in Paragraph 16).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee from approximately July 2018 until approximately September 2021.

10. During Plaintiff's employment with Defendants, Plaintiff often worked overtime hours, but did not always receive overtime compensation equal to one and one-half times his regular rate of pay for overtime hours. Specifically, Defendants paid Plaintiff a base rate of pay but paid him at higher rates of pay for prevailing wage projects and/or other specific projects. However, Defendants always paid Plaintiff at 1.5 times his *base* rate of pay and failed to incorporate Plaintiff's other rates of pay during the workweek into his "regular rate" when calculating overtime, and therefore failed to properly calculate Plaintiff's regular rate of pay for overtime purposes. For example, in the workweek of April 15-21, 2019, Plaintiff's wage statement reflects a total of 38 regular hours, including 19 hours at a rate of \$55.92 per hour, 2 hours at a rate of \$49.21 per hour, 8 hours at a rate of \$58.47 per hour, and only 9 regular hours at Plaintiff's base rate of pay of \$14 per hour. In that same workweek, Plaintiff's wage statement reflects 2 hours of overtime, but rather than incorporating all of his rates of pay in the regular rate and paying Plaintiff overtime at 1.5 times his "regular rate" for those hours, Defendants paid him at 1.5 times his *base* rate of pay for those hours. As another example, in the workweek of February 24 to March 1, 2020, Plaintiff's wage statement reflects a total of 40 regular hours, including 17 hours at a rate of \$49.21 per hour, 12 hours at a rate of \$58.47 per hour, and only 11 hours at Plaintiff's base rate of pay of \$14 per hour. In that same workweek, Plaintiff's wage statement reflects 2 hours of overtime, but Defendants paid Plaintiff for those hours at only 1.5 times his *base* rate of pay. On information and belief, Defendants have paid other non-exempt employees in the same manner for their overtime wages. Thus, as a result of this practice, Plaintiff and other non-exempt employees were paid less than one and one-half times (or two times in the case of double-time hours) their "regular rate" of pay for overtime hours worked.

11. In addition to underpaying employees for overtime hours worked, Defendants utilized a timekeeping policy/practice which resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. Specifically, Plaintiff and other non-exempt

employees were not provided with any mechanism to clock in and out for their shifts, and Defendants did not in fact keep accurate records of Plaintiff's and other non-exempt employees' hours worked. Instead, a foreman or supervisor would generally create timesheets for all employees on a jobsite and submit those timesheets to management. Plaintiff and other non-exempt employees were often underpaid as a result of this practice, because foremen/supervisors would not record all of their hours worked, and would generally record hours in whole hour or half-hour increments. Defendants' rounding/time-shaving of employees' hours worked was not even-handed and has resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. As a result of these policies/practices, Plaintiff and other non-exempt employees were underpaid for wages due, including overtime and minimum wages.

12. Defendants have also failed to provide Plaintiff and other non-exempt employees with all statutorily mandated meal periods due to Defendants' meal period policies/practices. Specifically, Plaintiff's and other non-exempt employees' meal periods were often late (i.e., beginning after 5 hours of work) short (i.e., less than 30 minutes), or missed, due to the workload imposed by Defendants that often prevented Plaintiff and other non-exempt employees from taking legally compliant meal periods. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required 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 when Defendants failed to provide a legally compliant meal period.

13. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other non-exempt employees were frequently unable to take the rest periods to which they were entitled as a result of the workload imposed by Defendants. In those instances that Defendants failed to authorize and permit Plaintiff and other non-exempt employees with a legally compliant rest period, Defendants failed to pay the rest period premiums required 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 rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

14. As a result of Defendants' failure to pay all minimum wages and overtime wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees. As a further result of Defendants' failure to pay all minimum wages and overtime wages, and failure to pay all required meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

15. Defendants also failed to reimburse Plaintiff and other employees for expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiff to use his personal cellular phone to communicate with supervisors and co-workers regarding work-related issues. Despite requiring Plaintiff to use his personal cellular phone for work, Defendants failed to reimburse Plaintiff for any portion of his personal cellular phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

CLASS ACTION ALLEGATIONS

16. Class Definitions: Plaintiff bring this action 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 who were subject to Defendants' timekeeping practices, at any time from four years prior to the filing of this action through the present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who (i) were subject to Defendants' timekeeping practices; and/or (ii) worked at different rates of pay during a pay period and also worked overtime hours, but were paid overtime at 1.5 times their base rate of pay during that pay period, at any time from four years immediately preceding the filing of this 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, at any time from 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 of 3.5 hours or more, at any time from 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 during the one year immediately preceding the filing of this lawsuit 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 are no longer employed by Defendants and who last worked for Defendants at any time from three years immediately preceding the filing of this lawsuit through the present.

g. The Expense Reimbursement Class consists of all of Defendants' employees in California who were required to use their personal cellular phones for work-related purposes, at any time from four years immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than seventy-five (75) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

18. **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' overtime practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to the overtime laws of the State of California;
- ii. Whether Defendants paid the Minimum Wage Class at least the minimum wage for all hours worked;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and
- vii. Whether Defendants properly reimbursed members of the Expense Reimbursement Class for all expenses incurred in the course of their employment.

19. **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' overtime rate, wage statement, meal period, rest period, and final wage policies/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.

20. **Typicality:** Plaintiff's claims 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 limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum

and overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages upon his separation of employment from Defendants, and was not reimbursed for expenses incurred in the course of his employment with Defendants.

21. **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 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.

22. **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 identified in Paragraph 16 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

25. 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 workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a 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 in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

26. 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, 218.6, 510, 558, 1194, and 1198, Wage Order 7, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

28. Wage Order 16, § 4 and 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 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. At all relevant times, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

29. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. 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 balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due, and interest thereon.

30. 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 interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the Labor Code and Wage Order 16.

31. Defendants' practice and uniform administration of company policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and

members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the Labor Code and Wage Order 16, for the reasons set forth in this Complaint.

34. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 16, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Labor Code §§ 226.7 and 516, and Wage Order 16, § 11 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.

37. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members for each rest period to which they were entitled while working.

38. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing,

including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all minimum and overtime wages earned, all meal and rest period premium wages earned, and total hours worked, in violation of Labor Code § 226.

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

42. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit pursuant to California Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of

1 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
2 to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
6 at their separation from employment, including (but not limited to) unpaid minimum wages,
7 unpaid overtime wages, and unpaid meal and rest period premium wages.

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

12 47. Defendants' failure to pay all final wages was willful within the meaning of Labor
13 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
14 Time Class their earned wages upon separation from employment results in a continued payment
15 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
16 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
17 attorneys' fees and costs of suit.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 49. It was necessary for Plaintiff and members of the Expense Reimbursement Class
23 to use their personal cellular phones in the discharge of their duties for Defendants. Although
24 Plaintiff and members of the Expense Reimbursement Class incurred these expenses in the direct
25 discharge of their job duties, Defendants did not reimburse these employees for such necessary
26 work expenditures during the four years preceding the filing of this lawsuit.

27 50. At all relevant times, Defendants were subject to Labor Code § 2802, which states
28 that "an employer shall indemnify his or her employees for all necessary expenditures or losses

1 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
2 her obedience to the directions of the employer.”

3 51. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
4 “any contract or agreement, express or implied, made by any employee to waive the benefits of
5 this article or any part thereof, is null and void, and this article shall not deprive any employee or
6 his personal representative of any right or remedy to which he is entitled under the laws of this
7 State.”

8 52. As a proximate result of Defendants’ policies and/or practices in violation of Labor
9 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class were damaged in
10 sums, which will be shown according to proof.

11 53. Plaintiff and members of the Expense Reimbursement Class are entitled to
12 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.
13 Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary
14 expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and
15 members of the Expense Reimbursement Class are entitled to interest, which shall accrue from
16 the date on which they incurred the initial necessary expenditure.

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

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

21 55. Defendants have engaged, and continue to engage, in unfair and/or unlawful
22 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
23 Plaintiff and the Classes all minimum wages and overtime wages due, failing to provide meal
24 periods or pay meal period premium wages, failure to authorize and permit rest periods or pay
25 rest period premium wages, failing to furnish accurate and complete itemized wage statements in
26 violation of Labor Code § 226, failing to pay all earned wages to Waiting Time Class members
27 at the time of their separation of employment, and failing to reimburse expenses incurred by
28 members of the Expense Reimbursement Class.

56. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and 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.

57. 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 all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

58. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

59. 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.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

60. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the 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 \$200.00 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

1 unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
2 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
3 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
4 employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00
5 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period;
6 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
7 employee per pay period for those violations of the Labor Code for which no civil penalty is
8 specifically provided, based on the following Labor Code violations:

- 9 a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or
10 double-time compensation earned, in violation of Labor Code §§ 204, 510, 558,
11 1194, and 1198;
- 12 b. Failing to pay Plaintiff and other aggrieved employees at least the statutory
13 minimum wage for all hours worked, in violation of Labor Code §§ 204, 558,
14 1182.12, 1194, 1194.2, 1197, and 1198;
- 15 c. Failing to reimburse Plaintiff and other aggrieved employees for all work-
16 related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- 17 d. Failing to provide all legally required meal periods and failing to pay meal
18 period premiums to Plaintiff and other aggrieved employees at the employees'
19 respective regular rates of compensation, in violation of Labor Code §§ 226.7,
20 512, 558, and 1198;
- 21 e. Failing to authorize and permit all legally required rest periods and failing to
22 pay rest period premiums to Plaintiff and other aggrieved employees at the
23 employees' respective regular rates of compensation, in violation of Labor
24 Code §§ 226.7, 516, 558, and 1198;
- 25 f. Failing to furnish Plaintiff and other aggrieved employees with accurate and
26 complete itemized wage statements, in violation Labor Code § 226;
- 27 g. Failing to pay all wages owed to Plaintiff and other aggrieved former employees
28 at their separation of employment, in violation of Labor Code §§ 201-203;

- 1 h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
2 twice during each calendar month, in violation of Labor Code § 204; and
3 i. Failing to maintain accurate records (including but not limited to actual hours
4 worked) on behalf of Plaintiff and other aggrieved employees, in violation of
5 Labor Code §§ 1174 and 1198.

6 61. On or about August 22, 2022, Plaintiff notified Defendant Ramsey Lath & Plaster
7 Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”)
8 via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to
9 bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the
10 violations of the California Labor Code identified in paragraph 60 (a)-(i) above. Now that sixty-
11 five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations,
12 Plaintiff has exhausted his administrative requirements for bringing a claim under the Private
13 Attorneys General Act with respect to these violations.

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

18 **PRAYER**

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

- 21 1. For an order certifying the proposed Classes;
22 2. For an order appointing Plaintiff as representative of the Classes;
23 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
24 4. Upon the First Cause of Action, for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
26 5. Upon the Second 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,
28 1197, and 1198;

1 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

3 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

5 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226, *et seq.*;

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

9 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
10 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

11 11. Upon the Eighth 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 Business and Professions Code § 17200, *et*
14 *seq.*;

15 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
16 employees, and the State of California according to proof pursuant to Labor Code § 2699,
17 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
18 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
19 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
20 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
21 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
22 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
23 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
24 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
27 Labor Code § 2699(f);

28 ///

1 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
2 §§ 218.6, 1194(a), 1194.2(a), and 2802(b); Civil Code § 3287, and Art. XV, § 1 of the California
3 Constitution;

4 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
5 226(e), 1194 *et seq.*, 2802(c), and 2699(g), and Code of Civil Procedure § 1021.5; and

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

7
8 Date: October 27, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

9
10 By:  _____

Tuvia Korobkin
Attorneys for Plaintiff

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.
14

15
16 Dated: October 27, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

17
18 By:  _____

Tuvia Korobkin
Attorneys for Plaintiff