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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

GONZALO LOPEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GLADDEN EQUIPMENT ERECTORS,
INC., a California corporation; and
DOES 1 through 100,

Defendants.

Case No.: STK-CV-UOE-2021-1816

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES/“DAY OF
REST” VIOLATIONS (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Gonzalo Lopez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against;
3 Gladden Equipment Erectors, Inc., a California corporation; and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 221, 226.7, 510, 512, 558, 1194, 1198, and 2802;
9 and Industrial Welfare Commission Wage Order 4 (“Wage Order 4”), in addition to seeking
10 declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil
11 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
12 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of San Joaquin. Defendants own, maintain offices, transact business, have agent(s) within
17 the County of San Joaquin, and/or otherwise are found within the County of San Joaquin, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-204, 221, 226.7, 510, 512, 558, 1194, 1198, and 2802; California Business & Professions
27 Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 4, which sets employment
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standards for Mechanics and other professional occupations.

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

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

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

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff commenced employment with Defendants as a non-exempt employee, in
5 the position of “General Industrial Mechanic” in approximately 2011 until on or around May 25,
6 2018. Plaintiff typically worked seven days a week. On Monday through Saturday, Plaintiff
7 would work from 6:00 a.m. until 7:00 p.m. On Sundays, Plaintiff would work from 6:00 a.m.
8 until 3:00 p.m. Plaintiff’s job duties revolved around performing mechanical work at large
9 industrial plants all around the country. Plaintiff would generally work on six weeks on, one
10 week off basis.

11 **Missed/Late Meal Periods**

12 10. During Plaintiff’s employment with Defendants, Plaintiff was not provided all
13 required meal periods due to Defendants’ meal period policies/practices which fail to provide
14 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing.
15 Specifically, while Plaintiff and the putative class were generally provided an hour for meal
16 periods, Plaintiff and the putative class were instructed by their supervisors to begin their meal
17 periods at 11:30 a.m., every day, which was 30 minutes after the end of the fifth hour of their
18 scheduled shifts, constituting systemically late meal periods.

19 11. In addition to Defendants’ failure to provide Plaintiff and other non-exempt
20 employees with all legally required first meal periods in a timely manner, Defendants also failed
21 to provide second meal periods to Plaintiff and other non-exempt employees when they worked
22 shifts in excess of 10.0 hours, a daily occurrence between Monday and Saturday each week.

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

4 **Rest Period Violations**

5 13. Plaintiff and other non-exempt employees were not provided all legally required
6 rest periods. Specifically, Plaintiff and other non-exempt employees would not be permitted to
7 leave the premises for their rest periods, as such their rest periods were not duty-free. Wage Order
8 4, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be
9 authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for
10 each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to
11 authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods,
12 due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-
13 exempt employees with an hour of pay at their regular rate for each missed rest period violation
14 as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
15 class period, Defendants maintained no payroll code or another mechanism for the payment of
16 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
17 to take lawful rest periods.

18 **Failure to Reimburse for All Necessary Business Expenses**

19 14. Defendants failed to adequately reimburse Plaintiff for all reasonable and
20 necessary work expenditures. For example, Defendants failed to reimburse for tools necessary
21 for the performance of Plaintiff's duties, including, but not limited to, power drills, wrenches,
22 gloves, and other items necessary for the performance of his work.

23 **Regular Rate of Pay/Overtime/Day of Rest**

24 15. Plaintiff and other non-exempt employees routinely worked in excess of 8 hours
25 per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to
26 one and one-half times their regular rate of pay for working overtime hours. For example,
27 Defendants paid Plaintiff and other non-exempt employees at different hourly rates depending on
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1 the task they were performing, including a base hourly rate and travel hourly rate. Despite
2 Defendants' payment of overtime pay to Plaintiff and other non-exempt employees, Defendants
3 failed to properly calculate the regular rate of pay, thereby causing Plaintiff and other non-exempt
4 employees to be underpaid all required overtime wages. On information and belief, this in part
5 due to Defendants' failure to properly blend all hourly rates in a given pay period to determine
6 the proper regular rate of pay for calculating overtime. For example, Plaintiff's wage statement
7 numbered 5474 for the pay period ending on August 4, 2017, shows that Plaintiff worked 23.5
8 regular hours at a rate of \$20.00 per hour and 8.0 regular travel hours at a rate of \$10.50 per hour,
9 meaning that for purposes of overtime, his blended regular rate of pay should have been \$17.58
10 per hour. As such, his overtime rate of pay for all purposes should have been paid at \$26.37 per
11 hour ($\$17.58 \times 1.5$). However, Plaintiff was only compensated at a rate of \$15.75 per hour for
12 overtime travel hours worked and \$21.00 per hour for double overtime travel hours worked.
13 Taking all forms of remuneration into account for purposes of overtime pay, Plaintiff should have
14 been paid approximately \$26.37 per hour for overtime travel hours worked, and approximately
15 \$35.16 per hour for double overtime travel hours worked. As such, Defendants failed to properly
16 account for all forms of compensation when for purposes of calculating the regular overtime rate
17 of pay for its non-exempt employees, causing a systematic underpayment of wages to Plaintiff
18 and the putative class. Moreover, Plaintiff and the putative class were not paid an overtime rate
19 of pay for the first eight hours worked on the seventh consecutive day of work in the workweek,
20 which, along with Defendant's other overtime practices, violated California's "Day of Rest" Laws
21 (Lab. Code, §§ 510, 551 and 552).

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

23 16. As a further result of Defendants' failure to pay all overtime wages, and meal and
24 rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his
25 separation of employment from Defendants.

26 **CLASS ACTION ALLEGATIONS**

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

- a. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and/or at least one hour on the seventh consecutive day of work in a workweek and: (i) were subject to Defendants' timekeeping systems and/or practices; and/or (ii) received Travel Pay and worked overtime during a corresponding pay period, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: worked at least one shift: (i) in excess of 5.0 hours; and/or (ii) in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present;
- c. The Employee Expense Class consists of all Defendants' current and former non-exempt employees in California who were not reimbursed for expenses incurred in the purchase of tools necessary for the performance of their duties.
- d. The Waiting Time Class consists of all Defendants' formerly employed members of the Overtime Class and Meal Period Class who separated from employment during the three years immediately preceding the filing of the Complaint through the present.

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

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

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

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, meal period, non-reimbursement, and payment of final wages policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not properly paid at the proper overtime rate for all overtime hours worked, provided compliant required meal periods, did not receive meal period premium wages when he was not provided compliant meal periods, was subject to Defendants' unlawful failure to reimburse, and was not paid all wages owed at time of separation of employment from Defendants.

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

7 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
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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 a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES/"DAY OF REST" VIOLATIONS (AGAINST AL DEFENDANTS)

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

25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 551, 552, 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.

26. 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 2. Wage Order 4, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their proper regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 510, 551, 552, 558, 1194, and 1198, Wage Order 4, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

1 **MEAL PERIOD VIOLATIONS**

2 **(AGAINST ALL DEFENDANTS)**

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

4 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 failed in their affirmative obligation to provide all of their non-exempt employees in California,
6 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
7 in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite
8 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
9 of the Meal Period Class at their respective regular rates of compensation, in accordance with
10 California Labor Code §§ 226.7, and 512.

11 30. As a result, Defendants are responsible for paying premium compensation for meal
12 period violations including interest thereon, as well as statutory penalties, civil penalties, and
13 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 2, and Civil Code §§
14 3287(b) and 3289.

15 **THIRD CAUSE OF ACTION**

16 **REST PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

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

22 33. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
23 of the Rest Period Class to take all legally compliant rest periods.

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

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 37. Due to Defendants’ unlawful policy and practice of requiring employees to
10 purchase tools necessary to the performance of their job duties at their own expense, Defendants
11 have violated Labor Code § 2802.

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

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

18 **FIFTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 41. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
23 an employer to pay all wages immediately at the time of termination of employment in the event
24 the employer discharges the employee or the employee provides at least 72 hours of notice of
25 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
26 intent to quit, said employee’s wages become due and payable not later than 72 hours upon said
27 employee’s last date of employment.

1 42. Defendants failed to timely pay Plaintiff all of his final wages at the time of
2 termination, which include, among other things, underpaid overtime wages, meal period premium
3 wages, and reimbursement for necessary business expenses. Further, Plaintiff is informed and
4 believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants
5 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
6 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
7 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

13 **SIXTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(AGAINST ALL DEFENDANTS)**

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

17 45. Defendants have engaged and continue to engage in unfair and/or unlawful
18 business practices in California in violation of California Business and Professions Code § 17200
19 *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages, provide all required meal
20 periods, failing to pay meal premium wage payments in lieu thereof, failing to reimburse for
21 necessary business expenditures, and willfully failing to timely pay Plaintiff and members of the
22 Waiting Time Class all final wages upon separation of employment.

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

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

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

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

12 **SEVENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST ALL DEFENDANTS)**

15 50. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
16 fully set forth herein.

17 51. Defendants have committed several Labor Code violations against Plaintiff,
18 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
19 within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved
20 employees, brings this representative action against Defendants to recover the civil penalties due
21 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
22 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
23 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
24 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
25 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
26 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
27 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
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violation pursuant 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 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, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 551, 552, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- d. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- e. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- f. Failing to provide Plaintiff and other aggrieved employees with suitable seating in violation of Labor Code § 1198 and Wage Order 8 § 14.

52. Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 52 (a)-(f). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

1 protect his interests and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
3 he is entitled to receive under California Labor Code § 2699(g).

4 **PRAYER**

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

- 7 1. For an order certifying the proposed Classes;
- 8 2. For an order appointing Plaintiff as representative of the Classes;
- 9 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 10 4. Upon the First Cause of Action, for compensatory, consequential, general, and
11 special damages according to proof pursuant to Labor Code §§ 204, 510, 551, 552, 558, 1194,
12 and 1198;
- 13 5. Upon the Second Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 15 6. Upon the Third Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 17 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code § 2802;
- 19 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
20 203.;
- 21 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
22 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
23 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
24 *seq.*;
- 25 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
26 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
27 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
28 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 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 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 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;

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 Code of Civil Procedure § 1021.5 and all other applicable statutes; and

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

Dated: October 8, 2022

Respectfully submitted,
STANBURY BROWN LAW, PC

By:



Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: October 8, 2022

Respectfully submitted,
STANBURY BROWN LAW, PC

By:



Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff