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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MARIO ALVARADO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01286100-CU-OE-CXC

**FIRST AMENDED CLASS AND 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,
558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE §226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

1 (9) CIVIL PENALTIES UNDER THE
2 PRIVATE ATTORNEYS GENERAL
3 ACT (LABOR CODE §§ 2698, *et seq.*)

4 DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

5 Plaintiff Mario Alvarado (“Plaintiff”), on behalf of himself and all others similarly
6 situated, hereby brings this First Amended Class and Representative Action Complaint
7 (“Complaint”) against Red Pointe Roofing, L.P., a California Limited Partnership; and Does 1
8 through 100, inclusive (collectively “Defendants”), and on information and belief alleges as
9 follows:

10 **JURISDICTION**

11 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
12 action for recovery of unpaid wages, penalties, and unreimbursed expenses under California
13 Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
14 1198, 2802, 2804, 2698 *et seq.*, and California Business and Professions Code § 17200 *et. seq.*
15 (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 16 (“Wage Order
16 16”) in addition to seeking declaratory relief, injunctive relief, and restitution. This Complaint is
17 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
18 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
19 this Court’s jurisdictional minimum.

20 **VENUE**

21 2. Venue is proper in this judicial district pursuant to California Code of Civil
22 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the
23 County of Orange. Defendants own, maintain offices, transact business, have an agent or agents
24 within the County of Orange, and/or otherwise are found within the County of Orange, and
25 Defendants are within the jurisdiction of this Court for purposes of service of process.

26 **THE PARTIES**

27 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
28 Plaintiff was, and currently is, a California resident, residing in the County of Orange. During the

four years immediately preceding the filing of the Complaint in this action, and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee in Orange County. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*, California Business and Professions Code § 17200 *et. seq.*, and Wage Order 16 which sets employment standards for the construction industry, which includes construction workers and roofers.

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 within the County of Orange by operating a commercial roofing business, and employed Plaintiff and other, similarly situated non-exempt employees within Orange County and the state of California and, therefore, were (and are) doing business in Orange 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 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further 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, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) 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 all Defendants, however designated whether by real or fictitious name, were and are in some manner responsible for the events, happenings, occurrence and instrumentalities upon and about which these claims are made. At all relevant times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

8 8. At all times mentioned herein, Defendants, and each of them, were members of
9 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
10 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
11 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
12 members of the Classes.

13 **GENERAL FACTUAL ALLEGATIONS**

14 9. Defendants are a Southern California commercial roofing provider, specializing in
15 roof construction and repair. Plaintiff was employed by Defendants as a non-exempt “Roofer”
16 from approximately October 28, 2020, to July 6, 2022. Plaintiff’s job duties included repairing
17 roof leaks as well as installing roof tile and shingles. Unless otherwise stated, all allegations
18 contained herein occurred during Plaintiff’s employment with Defendants.

19 10. Defendants required Plaintiff and other non-exempt employees to arrive at the
20 designated job site each day at least thirty minutes before the start of their scheduled shift.
21 However, Defendants only compensated employees for their scheduled hours, not the actual hours
22 that they worked. Defendants required Plaintiff and other non-exempt employees to fill out paper
23 timecards each workday corresponding to their scheduled hours. For example, Plaintiff’s
24 supervisor, Salvador Sanchez, prohibited Plaintiff from writing his actual start and end times on
25 his timesheet. As a result of Defendants’ policies/practices of only compensating for scheduled
26 hours, Defendants failed to compensate Plaintiff and other non-exempt employees for all
27 minimum and overtime wages earned.

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

1 timely 30-minute meal periods commencing before the end of the fifth hour of work. Specifically,
2 Defendants required Plaintiff and other non-exempt employees to begin working around 6:30
3 a.m. each day. However, in instances when a meal period was provided, Defendants required
4 employees to delay starting the meal period until approximately 12:00 p.m. (5.5 hours after work
5 commenced). Plaintiff was also regularly interrupted from his meal period, requiring him to return
6 to work prior to receiving a full 30 full minutes. Defendants also failed to provide Plaintiff and
7 other non-exempt employees with an additional hour of premium pay for each workday in which
8 a meal period violation occurred, as required by Labor Code § 226.7.

9 12. Plaintiff and other non-exempt employees were also not authorized and permitted
10 to take a rest period for every 4 hours worked (or major fraction thereof) due to Defendants'
11 unlawful rest period policies/practices. Specifically, Defendants failed to authorize and permit
12 any rest breaks throughout the workday in violation of California law. Defendants also failed to
13 provide Plaintiff and other non-exempt employees with an additional hour of premium pay for
14 each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

15 13. Defendants required Plaintiff and other non-exempt employees to use their
16 personal cell phones to receive calls from supervisors about project changes and to get directions
17 to job sites. Despite requiring employees to incur these necessary business expenses, Defendants
18 failed to compensate Plaintiff and other non-exempt employees for any portion of their monthly
19 cell phone expenses. *See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137,
20 1144 (holding that employer who requires employees use their personal cell phone for business
21 purposes must reimburse a reasonable percentage of the employee's cell phone bill). Moreover,
22 in instances when Defendants provided specialized roofing tools and other equipment (such as
23 soldering guns, helmets, ladders, etc.), Defendants unlawfully deducted the value of those tools
24 from Plaintiff and other non-exempt employees' earnings (noted as a deduction for "Small Tool"
25 on wage statements).

26 14. As a result of Defendants' failure to pay all minimum wages, overtime wages, and
27 meal and rest period premium wages owed, Defendants maintained inaccurate payroll records,
28 and issued inaccurate wage statements and failed to pay all final wages to Plaintiff and other non-

1 exempt employees upon their separation of employment.

2 **CLASS ACTION ALLEGATIONS**

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

- 5 a. The Minimum Wage Class consist of all Defendants' current and former non-
6 exempt employees in California who were subject to Defendants' timekeeping
7 policies and/or practices, during the four years immediately preceding the filing of
8 this action through the present.
- 9 b. The Overtime Class consists of all of Defendants' current and former non-exempt
10 employees in California who worked more than eight (8) hours per day and/or
11 forty (40) hours per week and were subject to Defendants' timekeeping
12 policies/practices, during the four years immediately preceding the filing of this
13 action through the present.
- 14 c. The Meal Period Class consists of all Defendants' current and former non-exempt
15 employees in California who worked at least one shift in excess of 5.0 hours
16 without a meal period of at least 30 minutes commencing prior to the end of the
17 fifth hour of work, during the four years immediately preceding the filing of this
18 action through the present.
- 19 d. The Rest Period Class consists of all Defendants' current and former non-exempt
20 employees in California who worked at least one shift in excess of 3.5 hours,
21 during the four years immediately preceding the filing of this action through the
22 present.
- 23 e. The Expense Reimbursement Class consists of all of Defendants' current and
24 former non-exempt employees in California who: (i) received a "Small Tool"
25 deduction; and/or (ii) were not reimbursed for the use of their personal cell phone,
26 during the four years immediately preceding the filing of this action through the
27 present.
- 28

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

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

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

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

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants provided meal and/or rest period premium payments for non-compliant meal and/or rest periods;
- v. Whether Defendants failed to reimburse members of the Expense Reimbursement Class for all necessary business expenses;

1 vi. Whether Defendants furnished legally compliant wage statements to members of
2 the Wage Statement Class; and

3 vii. Whether Defendants' policies and/or practices for the timing and amount of
4 payment of final wages to members of the Waiting Time Class at the time of
5 separation from employment were unlawful.

6 18. **Predominance of Common Questions:** Common questions of law and fact
7 predominate over questions that affect only individual members of the Classes. The common
8 questions of law set forth above are numerous and substantial and stem from Defendants' policies
9 and/or practices applicable to each individual class member, such as Defendants' uniform
10 timekeeping policies/practices, meal and rest period policies/practices, and expense
11 reimbursement policies/practices. As such, the common questions predominate over individual
12 questions concerning each individual class member's showing as to his or her eligibility for
13 recovery or as to the amount of his or her damages.

14 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
15 Plaintiff, like the members of the Classes, was employed by Defendants in California during the
16 applicable statute of limitations period and was deprived of all minimum wages owed, overtime
17 wages owed, was not provided all legally required meal and rest periods, was not reimbursed for
18 all necessary business expenses, did not receive accurate, compliant wage statements, and was
19 not paid all final wages owed at the time of separation of employment.

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

26 21. **Superiority:** The California Labor Code is broadly remedial in nature and serves
27 an important public interest in establishing minimum working conditions and standards in
28 California. These laws and labor standards protect the average working employee from

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

22 **FIRST CAUSE OF ACTION**

23 **MINIMUM WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 23. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
27 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
28 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal

1 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
2 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
3 wages and interest accrued thereon.

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

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

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

19 27. The foregoing practices and policies are unlawful and create an entitlement to
20 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
21 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
22 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
23 1194, 1197, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME WAGES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,

1 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
2 compensation for hours worked, and provide a private right of action for the failure to pay all
3 overtime compensation for overtime work performed.

4 30. At all times relevant herein, Defendants were required to properly compensate
5 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
6 hours worked pursuant to Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires
7 an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of
8 pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the
9 workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the
10 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
11 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
12 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
13 Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

14 31. The foregoing policies and practices alleged herein are unlawful and create
15 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
16 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
17 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
18 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

19 **THIRD CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

23 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 failed in their affirmative obligation to provide all of their non-exempt employees in California,
25 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
26 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
27 Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members
28 of the Meal Period Class at their respective regular rates of pay, in accordance with California

1 Labor Code §§ 204, 210, 226.7, and 512.

2 34. As a result, Defendants are responsible for paying premium compensation for meal
3 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 16,
4 including interest thereon, statutory penalties, civil penalties, and costs of suit.

5 **FOURTH CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

9 36. Wage Order 16, § 11 and California Labor Code §§ 226.7, 516, 558, and 1198
10 establish the right of employees to be authorized and permitted to take a paid rest period of at
11 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

12 37. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
13 of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay
14 rest period premium wages when rest periods were not authorized and permitted.

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

21 **(AGAINST ALL DEFENDANTS)**

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

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

27 41. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
28 states that “any contract or agreement, express or implied, made by any employee to waive the

benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

42. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 16 § 8, Plaintiff and members of the Classes were damaged in sums, which will be shown according to proof.

43. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the date on which Plaintiff incurred the necessary expenditure.

SIXTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

45. 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 with complete and accurate wage statements that included, among other requirements, all hours worked, all overtime and minimum wages earned, gross wages earned, and net wages earned, in violation of Labor Code § 226 *et seq.*

46. Defendants’ failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages owed, and deprived Plaintiff of the information necessary to identify the discrepancies in Defendants’ reported data.

47. Defendants’ failures create an entitlement to recovery by Plaintiff and members of the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys’ fees, and costs of suit according to California Labor Code § 226 *et seq.*

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

11 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to timely pay Plaintiff and members of the Classes all final wages due to them at the time
13 of their separation including, among other things, underpaid overtime, minimum wages owed,
14 and meal and rest period premiums. Defendants' failure to pay all final wages was willful within
15 the meaning of Labor Code § 203.

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

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 53. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing
28 to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff

1 and the Classes lawful rest periods; failing to reimburse Plaintiff and the Classes for all necessary
2 business expenses; failing to furnish accurate and complete itemized wage statements in violation
3 of § 226 *et seq.*; and failing to pay all final wages at the time of separation from employment.

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

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

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

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

20 **NINTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(AGAINST ALL DEFENDANTS)**

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

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

1 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
2 to: (1) \$100.00 for each initial violation of failing to pay employees pursuant to Labor
3 Code § 210; (2) \$50.00 for each initial violation pursuant to Labor Code § 558 per employee per
4 pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1 per employee
5 per pay period; (4) \$250.00 for each initial violation pursuant to Labor Code § 226.3 per
6 employee per pay period; and/or (5) \$100.00 for each initial violation per employee per pay period
7 for those violations of the Labor Code for which no civil penalty is specifically provided, based
8 on the following Labor Code violations:

- 9 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
10 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
11 and 1197
- 12 b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
13 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 14 c. Failing to provide meal periods as required by law and failing to pay meal period
15 premiums to Plaintiff and other aggrieved employees at these employees'
16 respective regular rates of compensation for meal period violations in violation of
17 Labor Code §§ 226.7, 512, and 558;
- 18 d. Failing to authorize and permit Plaintiff and other aggrieved employees all
19 required rest periods and failing to pay rest period premiums to Plaintiff and other
20 aggrieved employees at these employees' respective regular rates of compensation
21 for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- 22 e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related
23 expenses they incurred in violation of Labor Code §§ 2802 and 2804;
- 24 f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees
25 in violation of Labor Code §§ 201-203;
- 26 g. Failing to furnish Plaintiff and other aggrieved employees with accurate and
27 compliant itemized wage statements in violation of Labor Code § 226 *et seq*;
- 28 h. 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

- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

60. On October 13, 2022, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail 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 herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

61. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’ current and former nonexempt employees who worked for Defendants in California at any time between October 13, 2021, and the present.

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 558, 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

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

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

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

9. Upon the Sixth Cause of Action for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;

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

11. Upon the Eighth Cause of Action for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business and Professions Code § 17200 *et seq.*;

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation of failing to pay employees pursuant to Labor Code § 210; (2) \$50.00 for each initial violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 59 (a)-(i) above;

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

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code

1 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and Code of Civil Procedure § 1021.5; and

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

3
4 Dated: December 19, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

5
6 By:


Fletcher W. Schmidt
Attorney for Plaintiff

7
8 **DEMAND FOR JURY TRIAL**

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

10
11 Dated: December 19, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By:


Fletcher W. Schmidt
Attorney for Plaintiff