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FILED
Superior Court of California
County of Los Angeles

01/09/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ROBERTO NUÑEZ MAGANA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

SAHARA CONSTRUCTION CO., INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22STCV35142

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

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (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**

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Roberto Nuñez Magana (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendants Sahara Construction Co., Inc., a California corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

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

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los Angeles. Defendants transact business within the County of Los Angeles and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within Los Angeles County. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as

1 a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
2 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
3 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
4 1198, 2802, 2804, and *et seq.*, California Business and Professions Code § 17200 *et seq.* ("Unfair
5 Competition Law"), and Wage Order 16, which sets employment standards for the construction
6 industry.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing this action and continuing to the present, Defendants did (and continue
9 to do) business within the County of Los Angeles and the State of California by operating a
10 plumbing repair service company and therefore, were (and are) doing business in the County of
11 Los Angeles and the State of California.

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

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

23 7. At all times herein mentioned, each of said Defendants participated in the doing
24 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
25 Defendants, and each of them, were the agents, servants, and employees of each and every one of
26 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
27 were acting within the course and scope of said agency and employment. Defendants, and each
28 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, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a construction company in Los Angeles, California. Plaintiff was employed by Defendants as a non-exempt “Carpenter/General Laborer” from approximately November 2021 to March 2022. Plaintiff’s primary job duties consisted of constructing residential homes and commercial buildings, including assembling their structural framework and preparing and laying out cement with heavy machinery and tools.

10. During Plaintiff’s employment with Defendants, Defendants maintained an unlawful timekeeping policy/practice that failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Defendants did not maintain timeclocks or other electronic timekeeping records, but instead Defendants’ foremen personally maintained manual timesheets on which they would write the scheduled start and stop times of the employees’ shifts. As a result, Defendants only paid Plaintiff and other non-exempt employees for their scheduled shift times even if they arrived at the construction site early and routinely rounded in Defendants’ favor when an employee was late to a shift. For example, Defendants’ foreman recorded Plaintiff’s daily hours as 7:00am to 5:00pm, even if Plaintiff arrived at his shift early and began work before 7:00am. Moreover, if Plaintiff was 15 minutes late to work, the foreman marked his start time as 8:00am, even though Plaintiff began working at 7:15am. Moreover, Defendants did not compensate Plaintiff and other non-exempt employees for the hours they spent traveling between various work locations. As a result of failing to pay for pre-shift work, rounding only in Defendants’ favor, and failing to pay travel time, Defendants failed to properly compensate Plaintiff and other non-exempt employees for all hours worked and deprived them of all required minimum and overtime wages earned.

1 11. Defendants also failed to provide Plaintiff and other non-exempt employees with
2 all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices
3 that failed to provide timely, duty-free 30-minute first meal periods commencing before the end
4 of the fifth hour of work and *any* second duty-free, 30-minute meal periods when they worked
5 shifts in excess of 10.0 hours. As discussed above, Defendants' foreman recorded Plaintiff and
6 other non-exempt-employees' hours, including their meal periods. For example, Defendants'
7 foreman manually recorded pre-scheduled meal periods from 11:00am to 11:30am, even when
8 Plaintiff was not provided with a meal period, or only allowed to take an untimely, shortened
9 meal period. Similarly, Defendants failed to provide Plaintiff and other non-exempt employees
10 with any second meal periods when they worked shifts in excess of 10 hours. Moreover,
11 Defendants also required Plaintiff and other non-exempt employees to sign an "On-Duty Meal
12 and Rest Break Agreement," purportedly to waive their meal periods due to the nature of their
13 job duties. Defendants' "On-Duty Meal and Rest Break Agreement" is unenforceable as to meal
14 periods since the nature of Plaintiff's job did not require him to be on-duty at all times during the
15 workday. Additionally, Defendants' "On-Duty Meal and Rest Break Agreement" references
16 Wage Order 5, which applies to the public housekeeping industry, rather than Wage Order 16,
17 which applies to the construction work Defendants are engaged in. On occasions when Plaintiff
18 and other non-exempt employees were not provided with all lawful meal periods to which they
19 were entitled, Defendants failed to pay Plaintiff and other non-exempt employees an additional
20 hour of premium pay at their respective regular rates of pay for each workday in which a meal
21 period violation occurred, as required by Labor Code section 226.7. Upon information and belief,
22 during at least a portion of the relevant time period, Defendants failed to maintain pay codes for
23 the payment of meal period premium payments as required by Labor Code section 226.7.

24 12. Defendants failed to authorize and permit Plaintiff and other non-exempt
25 employees to take all duty-free 10-minute rest periods for every four hours worked, or major
26 fraction thereof, due to Defendants' unlawful rest period policies/practices. Specifically,
27 Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take *any*
28 rest periods during their workday, as confirmed by the fact that Defendants had employees

1 execute an “On-Duty Meal and Rest Break Agreement”. Moreover, Defendants’ “On-Duty Meal
2 and Rest Break Agreement” is facially unenforceable as to rest periods since Wage Order 16 does
3 not permit such agreements with respect to rest periods. On occasions when Plaintiff and other
4 non-exempt employees were not authorized and permitted to take all legally-compliant rest
5 periods to which they were entitled, Defendants failed to compensate Plaintiff and other non-
6 exempt employees with an additional hour of premium pay at their respective regular rates of pay
7 for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.
8 Upon information and belief, during at least a portion of the relevant time period, Defendants
9 failed to maintain pay codes for the payment of rest period premium payments as required by
10 Labor Code section 226.7.

11 13. During their respective employments with Defendants, Plaintiff and other non-
12 exempt employees were not reimbursed for all necessary business expenses pursuant to Labor
13 Code § 2802. Specifically, Defendants provided Plaintiff and other non-exempt employees with
14 work assignment locations by calling them on their personal cellular phones. For example, when
15 Plaintiff arrived at a construction site ready to work, Defendants frequently called Plaintiff on his
16 personal cellular phone and instructed him to drive his personal vehicle to a different construction
17 location, that was sometimes hours away. Defendants did not reimburse Plaintiff and other non-
18 exempt employees for mileage expenses incurred from Defendants’ frequent and impromptu
19 changes to their work location. Moreover, Plaintiff and other non-exempt employees were
20 required to purchase and cover repair costs for tools necessary to complete the construction jobs,
21 including mallets, handsaws, tool belts, shovels, and trowels, among other items. As such,
22 Defendants failed to reimburse Plaintiff and other non-exempt employees for all necessary
23 business expenses associated with using their personal vehicles, including mileage, the cost of
24 purchasing and repairing necessary tools, and cellular phone use in violation of Labor Code
25 § 2802. Defendants were also mandated by *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.
26 App. 4th 1137 (2014), to reimburse Plaintiff for a reasonable portion of his cellular phone
27 expenses.

28 14. As a result of Defendants’ failure to pay all overtime wages, minimum wages, and

meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records, issued inaccurate wage statements to Plaintiff and other non-exempt employees, and failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their respective separations from employment.

CLASS ACTION ALLEGATIONS

15. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following 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 8.0 hours per day and/or 40.0 hours per workweek and were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- b. The Minimum Wage Class consists of all Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices during the four years immediately preceding the filing of the Complaint through the present.
- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this action through the present.
- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.
- e. The Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who were required to use a personal cellular phone, and/or a personal vehicle, and/or purchased tools for required work activities, without reimbursement for work-related purposes during the four years immediately preceding the filing of this action through the present.

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 from Defendants, during the one year immediately preceding the filing of this action through the present.

g. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who separated their employment with 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 are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) 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 non-exempt employees, which predominate over questions affecting only individual members including, without limitation:

i. Whether Defendants lawfully paid wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;

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

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 authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

v. Whether Defendants correctly paid meal and/or rest period premium payments for

non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;

vi. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804;

vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

viii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

18. **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 overtime and minimum wage policies/practices, meal and rest period policies/practices, and reimbursement policies/practices. As such, 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.

19. **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 limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum wages owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, was not reimbursed for his necessary business expenses incurred, was not provided with accurate, itemized wage statements, and did not receive all final wages owed at the time of his separation from employment.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-

hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **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 interests 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 herein are maintainable as a Class under § 382 of the Code of Civil Procedure.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 24. At all times relevant herein, Defendants were required to properly pay Plaintiff
10 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
11 Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee
12 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
13 of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

14 25. At all times relevant herein, Defendants caused Plaintiff and members of the
15 Overtime Class to work overtime hours but did not compensate Plaintiff or members of the
16 Overtime Class at one and one-half times their regular rate of pay for such hours.

17 26. The foregoing policies and practices are unlawful and create entitlement to
18 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
19 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
20 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
21 16, and Code of Civil Procedure § 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **MINIMUM WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 28. 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 29. At all relevant times herein, Defendants failed to conform their pay practices to
5 the requirements of the law. This unlawful conduct includes but is not limited to all hours they
6 were subject to Defendants' control. Accordingly, Plaintiff and members of the Minimum Wage
7 Class were not compensated for all hours actually worked as required by the California Labor
8 Code and Wage Order 16.

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

14 31. 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 they 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 32. Defendants' timekeeping policies/practices are unlawful and create an entitlement
20 to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid
21 amount of minimum wages, liquidated damages, including interest thereon, statutory penalties,
22 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210,
23 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

24 **THIRD CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

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

28 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed in their affirmative obligation to provide all of their non-exempt employees in California,
2 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
3 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10, for the
4 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
5 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
6 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
7 California Labor Code §§ 226.7 and 512.

8 35. As a result, Defendants are responsible for paying premium compensation for meal
9 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
10 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Code of Civil Procedure
11 § 1021.5.

12 **FOURTH CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

16 37. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of
17 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
18 period worked, or major fraction thereof.

19 38. As alleged herein, and due to Defendants' unlawful rest period policies and/or
20 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
21 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
22 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
23 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
24 California Labor Code § 226.7.

25 39. The foregoing violations create an entitlement to recovery by Plaintiff and
26 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
27 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
28 to Labor Code §§ 226.7, 516, and 558, Wage Order 16, and Code of Civil Procedure § 1021.5.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 41. 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 obedience to the directions of the employer.”

9 42. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
10 states that “any contract or agreement, express or implied, made by any employee to waive the
11 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
12 employee or his personal representative of any right or remedy to which he is entitled under the
13 laws of this State.”

14 43. As alleged herein, due to Defendants’ unlawful reimbursement practices,
15 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
16 necessary business expenses incurred, including, among other things, the cost of cell phone usage,
17 vehicle mileage, and tools.

18 44. As a proximate result of Defendants’ policies and/or practices in violation of Labor
19 Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to
20 damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to
21 proof at trial, pursuant to Labor Code § 2802.

22 **SIXTH CAUSE OF ACTION**

23 **WAGE STATEMENT VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
28 and members of the Wage Statement Class with complete and accurate itemized wage statements

that included, among other requirements, all overtime and minimum wages earned, and all meal and rest period premium wages owed, in violation of Labor Code § 226 *et seq.*

47. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class 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 all meal and rest period premium wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

48. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for 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.*

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

51. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to

1 pay all final wages was willful within the meaning of Labor Code § 203.

2 52. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
3 Time Class all earned wages upon separation from employment results in a continued payment
4 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
5 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
6 plus reasonable attorneys' fees and costs of suit.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

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

11 54. Defendants have engaged, and continue to engage, in unfair and/or unlawful
12 business practices in California in violation of California Business and Professions Code § 17200
13 *et seq.*, by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
14 wages owed, failing to pay all required meal and rest period premium wages owed, failing to
15 reimburse for all necessary business expenses incurred, knowingly failing to furnish complete and
16 accurate itemized wage statements, and failing to pay all final wages at the time of separation
17 from employment.

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

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

27 57. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of this action.

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

6 **NINTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

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

10 60. Defendants have committed several Labor Code violations against Plaintiff,
11 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
12 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
13 employees, brings this representative action against Defendants to recover the civil penalties due
14 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
15 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
16 to: (1) \$100.00 for each initial violation for each failure to pay each employee pursuant to Labor
17 Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation pursuant
18 to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation pursuant
19 to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation
20 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
21 violation per employee per pay period for those violations of the Labor Code for which no civil
22 penalty is specifically provided, based on the following Labor Code violations:

23 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
24 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

25 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
26 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
27 and 1197;

28 c. Failing to provide meal periods as required by law and failing to pay meal period

premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;

d. Failing to authorize and permit Plaintiff and similarly aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest period premiums to Plaintiff and similarly aggrieved employees at these employees' respective regular rates of pay for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;

e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses they incurred in violation of Labor Code §§ 2802 and 2804;

f. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226 *et seq*;

g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;

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.

61. On November 4, 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.

62. 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'

1 current and former nonexempt employees who worked for Defendants in California at any time
2 between November 4, 2021, and the present.

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

7 **PRAYER**

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

- 10 1. For an order certifying the proposed Classes;
- 11 2. For an order appointing Plaintiff as representative of the Classes;
- 12 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 13 4. Upon the First Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
16 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
17 1194.2 and 1197;
- 18 6. Upon the Third Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 20 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 22 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 24 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code
25 § 226 *et. seq.*;
- 26 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
27 to Labor Code §§ 201-203;
- 28 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the

1 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
2 practices declared by this Court to be in violation of California Business and Professions Code
3 § 17200 *et seq.*;

4 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
5 aggrieved employees, and the State of California according to proof pursuant to Labor
6 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
7 violation for each failure to pay each employee pursuant to Labor Code § 210 for each failure to
8 pay each employee; (2) \$50.00 for each initial violation pursuant to Labor Code § 558 per
9 employee per pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1
10 per employee per pay period; (4) \$250.00 for each initial violation pursuant to Labor
11 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation per
12 employee per pay period for those violations of the Labor Code for which no civil penalty is
13 specifically provided, based on the violations of Labor Code sections cited in Paragraph 60 (a)-
14 (i) above;

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

17 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
18 §§ 218.5, 1194 *et seq.*, 226, and 2802, and Code of Civil Procedure § 1021.5; and

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

20 Dated: January 9, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

21 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

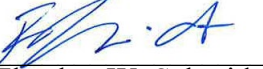
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23
24 **DEMAND FOR JURY TRIAL**

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

26 Dated: January 9, 2023

HAINES LAW GROUP, APC

27 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 9, 2023, I served the foregoing document(s) described as:

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

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

Executed on January 9, 2023, at El Segundo, California.

1

PROOF OF SERVICE