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SUPERIOR COURT

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MICHAEL MOORE

IN THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

MICHAEL MOORE, an individual, on behalf of
all others similarly situated,

Plaintiffs,

v.

REPUBLIC ELECTRIC WEST, INC., a
California corporation, ERIC STAFFORD, an
individual, and DOES 1 through 20 inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0012204

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
3. Failure to Timely Pay Wages in Violation of Labor Code § 204;
4. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;
5. Unfair Competition in Violation of Labor Code §§ 17200, et seq.
6. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

Jury Trial Demanded

1 1. Plaintiff MICHAEL MOORE, on behalf of himself and all others similarly situated,
2 and as an aggrieved employee on behalf of all other aggrieved employees, is informed and believes
3 and thereon alleges as follows:

4 **PARTIES, VENUE AND JURISDICTION**

5 2. This Class Action is brought pursuant to Code of Civil Procedure § 382 to recover
6 wages and all other available relief on behalf of Plaintiff and all similarly situated current and
7 former non-exempt, hourly- paid employees of Defendants.

8 3. This enforcement action is brought pursuant to the Private Attorneys General Act of
9 2004, California Labor Code §§ 2698, et seq. (“PAGA”) to recover civil penalties and any other
10 available relief on behalf of Plaintiff, the State of California, and other current and former aggrieved
11 employees of Defendants and against whom one or more Labor Code violations or any provision
12 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
13 Order were committed, as set forth in this Complaint.

14 4. Plaintiff MICHAEL MOORE worked as a for REPUBLIC ELECTRIC WEST, INC.
15 AND ERIC STAFFORD, and DOES 1-20, a business that installs electrical wiring for buildings, at
16 3502 Mars Way, Suite 101, Tracey, CA 95377, from May 2020 to May 2022. Plaintiff's job duties
17 as a lead from May 2020 to February 2021 included installing plugs, lights, and braker panels
18 throughout the buildings and would check that the equipment installed worked properly to ensure
19 that it would pass city inspections. As a foreman from March 2021 to May 2022 Plaintiff's job
20 duties were similar, but he would supervise the employees to make sure that the work was done
21 correctly, and would supervise multiple homes .

22 5. Plaintiff MICHAEL MOORE was at all times relevant hereto a resident of Valley
23 Springs, California.

24 6. At all relevant times herein, Defendant REPUBLIC ELECTRIC WEST, INC. was a
25 Corporation with its principal place of business in Sacramento, California.

26 7. Defendant ERIC STAFFORD was at all times relevant herein the principal of
27 REPUBLIC ELECTRIC WEST, INC..

28 8. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5

1 because this suit was filed in the county where the liability arises, where the breach occurred and
2 where Defendants resided at the commencement of this action.

3 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
4 unity of interest and ownership between REPUBLIC ELECTRIC WEST, INC., ERIC STAFFORD
5 and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

6 10. Plaintiff is informed and believes, and based thereon alleges, that despite the
7 formation of purported corporate existence, REPUBLIC ELECTRIC WEST, INC., ERIC
8 STAFFORD and DOES 1-20 are, in reality, one and the same.

9 11. REPUBLIC ELECTRIC WEST, INC., ERIC STAFFORD and DOES 1-20 do not
10 comply with all requisite corporate formalities to maintain a legal and separate existence.

11 12. The business affairs of REPUBLIC ELECTRIC WEST, INC., ERIC STAFFORD
12 and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the same cannot
13 reasonably be segregated, and the same are in inextricable confusion. REPUBLIC ELECTRIC
14 WEST, INC. is, and at all times relevant hereto was, used by DOES 1-20 and ERIC STAFFORD as
15 a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter
16 ego of DOES 1-20. The recognition of the separate existence of REPUBLIC ELECTRIC WEST,
17 INC. would not promote justice, in that it would permit Defendants to insulate themselves from
18 liability to Plaintiff for violations of state law. The corporate existence of REPUBLIC ELECTRIC
19 WEST, INC. and DOES 1-20 should be disregarded in equity and for the ends of justice because
20 such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

21 13. Accordingly, REPUBLIC ELECTRIC WEST, INC., ERIC STAFFORD and DOES
22 1-20 are the alter egos of one another, and the fiction of their separate corporate existence must be
23 disregarded.

24 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
25 thereon alleges that REPUBLIC ELECTRIC WEST, INC., ERIC STAFFORD and DOES 1-20 are
26 joint employers by virtue of a joint enterprise, and that the employees and agents of REPUBLIC
27 ELECTRIC WEST, INC. were also employees of ERIC STAFFORD and DOES 1-20. REPUBLIC
28 ELECTRIC WEST, INC. employees performed services for each and every one of Defendants, and

1 to the mutual benefit of all Defendants, and all Defendants shared control of them as employees,
2 either directly or indirectly, and the manner in which Defendants' business was and is conducted.

3 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
5 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
6 Complaint to insert the true names and capacities of these Defendants when they become known to
7 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
8 named Defendants is responsible for the wrongful acts alleged herein and are therefore liable to
9 Plaintiff as alleged hereinafter.

10 16. Plaintiff is informed and believes and based thereupon alleges, that at all times
11 relevant hereto, Defendants were the agents, employees, managing agents, supervisors,
12 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of
13 the other Defendants, and each of them, and in doing the things alleged herein, were acting at least
14 in part within the course and scope of said agency, employment, conspiracy, joint employer, alter
15 ego status, successor status and/or joint venture and with the permission and consent of each of the
16 other Defendants.

17 17. Plaintiff is informed and believes and based thereupon alleges, that Defendants,
18 including those defendants named as DOES 1-20 acted in concert with one another to commit the
19 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in
20 the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and
21 believes, and based thereupon alleges, that Defendants, including those defendants named as DOES
22 1-20 formed and executed a conspiracy or common plan pursuant to which they would commit the
23 unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said
24 conspiracy, intended to cause and actually causing Plaintiff's harm.

25 18. Whenever and wherever reference is made in this Complaint to any act or failure to
26 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
27 the acts and/or failures to act by each Defendant acting individually, jointly and severally.
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20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of wages during their employment. Plaintiff and class members did not receive payment of all wages, including full reimbursement for all business-related expenses and costs they incurred in direct consequence of the discharge of their duties in violation of the California Labor Code.

22. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so.

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All persons who worked for Defendants as non-exempt, hourly-paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

All persons who worked for Defendants as non-exempt, hourly-paid employees in California

1 and who received at least one wage statement within one year prior to the filing of the initial
2 complaint until the date of trial (“Subclass”).

3 25. Members of the Class and Subclass are referred to herein as “Class.”

4 26. Plaintiff reserves the right to redefine the Class and to add additional subclasses as
5 appropriate based on further investigation and discovery.

6 27. At all relevant times, Defendants have had a common and consistent policy and
7 practice of failing to, reimburse for necessary business expenditures, furnish compliant wage
8 statements, maintain accurate pay records, and timely pay wages in violation of the Labor Code and
9 IWC Wage Orders.

10 28. There is a well-defined community of interest in the litigation and the class members
11 are readily ascertainable:

12 29. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all
13 members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time.
14 However, the Class is estimated to be greater than 100 individuals and the identity of such
15 membership is readily ascertainable by inspection of Defendants’ employment records.

16 30. **Commonality:** There are questions of law and fact common to the Class that are
17 answerable on a common basis, and these questions predominate over individual questions. The
18 questions of law and fact common to the Class include, without limitation:

- 19 a. Whether Defendants provided Plaintiff and class members with complete and
20 accurate wage statements as required by California Labor Code section 226 (a);
- 21 b. Whether Defendants failed to reimburse Plaintiff and class members for
22 necessary expenditures upon their discharge;
- 23 c. Whether Defendants failed to timely reimburse Plaintiff and class members for
24 necessary expenditures to Plaintiff and class members during their employment;
- 25 d. Whether Defendants failed to reimburse Plaintiff and class members for
26 necessary business expenditures, losses incurred by them in direct consequence
27 of the discharge of their duties or obedience to the directions of the employer;
- 28 e. Whether Defendants engaged in unlawful and unfair business practices in

violation of California Business & Professions Code sections 17200, *et seq.*; and,

31. **Typicality:** Plaintiff's claims are typical of the claims of the Class he seeks to represent. As set forth herein, Defendants' common course of conduct causes Plaintiff and similarly situated persons employed by Defendants the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

32. **Adequacy:** Plaintiff will fairly and adequately represent the interests of all members of the Class he seeks to represent. Plaintiff is members of the Class he seeks to represent, does not have any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the Class, and has already devoted time and resources to the initial investigation of these claims. Plaintiff's attorney is competent and experienced in litigating employment actions, including wage and hour class actions.

33. **Superiority of Class Action:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by Defendants. Because the damages suffered by certain individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for Class Members to pursue their claims separately. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal, fraudulent and unfair employment practices and policies. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Class action treatment will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for all members of the Class.

FIRST CAUSE OF ACTION

FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES

IN VIOLATION OF LABOR CODE § 2802

(AGAINST ALL DEFENDANTS)

34. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

1 35. An employer shall indemnify his or her employee for all necessary expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
3 or her obedience to the directions of the employer.

4 36. At all times relevant herein, Class Members have been required by Defendants to
5 purchase tools, and in fact did purchase tools in order to perform their duties.

6 37. At all times relevant herein, Defendants have had a uniform practice and policy of
7 paying their employees less than twice the minimum wage in contravention of the applicable IWC
8 Wage Orders and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

9 38. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
10 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
11 indemnify the Class for the reasonable expenses they incurred in the course of performing their
12 duties. Specifically, Plaintiff is informed and believes and thereon alleges that at all relevant times,
13 Defendants have not reimbursed Class Members for the purchase of their tools.

14 39. When Plaintiff was first hired, he was told by Defendants that he was required to
15 provide all his own tools. He was also given the option of Defendants buying the tools for him, and
16 then each month have part of his paycheck deducted to pay off the tools that were purchased by
17 Defendants until the debt was paid off. Plaintiff has spent approximately \$5,500 on tools to
18 complete his job duties for Defendants. Defendants do have a tool room where the electricians can
19 check out tools for certain job duties, but there are not enough tools in the tool room for all the
20 employees to adequately perform their job duties. Plaintiff was paid \$24 per hour from May 2020 to
21 October 2020, \$26 per hour from November 2020 to February 2021, and \$28 per hour from March
22 2021 to May 2022.

23 40. As a result of the foregoing, all members of the Class are entitled to recover all sums
24 incurred by them for the purchase of the tools that were necessary for the performance of their jobs
25 and which they were required to purchase in an amount according to proof at trial.

26 41. As a result of the foregoing, Class members are further entitled to an award of
27 interest at the same rate as judgments in civil actions, accruing from the date on which they incurred
28 the necessary expenditures or losses and all reasonable costs, including attorney's fees incurred by

1 them for enforcing the rights granted by Labor Code § 2802.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
4 **AND FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**
5 **IN VIOLATION OF LABOR CODE §§ 226 1174 (d), and 1198**
6 **(AGAINST ALL DEFENDANTS)**

7 42. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
8 though fully set forth herein.

9 43. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their
10 non-exempt employees with accurate itemized statements showing total hours worked, hourly
11 wages, gross wages, total deductions net wages earned and name of the employer. An employer
12 who violates these Code sections is liable to its employees for the greater of actual damages
13 suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation
14 occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of
15 \$4,000.00.

16 44. “Every employer shall keep accurate information with respect to each employee
17 including the following: (1) Full name, home address, occupation and social security number ... (3)
18 Meal periods, split shift intervals and total daily hours worked shall also be recorded.” IWC Wage
19 Order 4-2001, section 7 (A) (1) & (3).

20 45. “Every person employing labor in this state shall: (c) Keep a record showing the
21 names and addresses of all employees employed and the ages of all minors. (d) Keep, at a central
22 location in the state or at the plants or establishments at which employees are employed, payroll
23 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
24 units earned by and any applicable piece rate paid to, employees employed at the respective plants
25 or establishments.” Lab. Code § 1174 (c) & (d).

26 46. “Any person employing labor who willfully fails to maintain the records required by
27 subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of
28 Section 1174 ... shall be subject to a civil penalty of five hundred dollars (\$500).” Cal. Lab. Code §

1 1174.5.

2 47. "A copy of the statement and the record of the deductions shall be kept on file by the
3 employer for at least three years at the place of employment or at a central location within the State
4 of California." Cal. Lab. Code § 226 (a).

5 48. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
6 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
7 employer for such violation. The term 'other person acting on behalf of an employer' is limited to a
8 natural person who is an owner, director, officer, or managing agent of the employer.

9 49. At all relevant times, Defendants have knowingly and intentionally provided
10 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.

11 50. Because Defendants failed to document and deducted time worked from Plaintiff's
12 and Subclass members' wage statements and employment records for meal periods they did not
13 actually receive, Defendants unlawfully deducted wages earned and meal period premiums that
14 should have been paid. Thus, Defendants did not furnish wage statements to Plaintiff and Subclass
15 members containing the correct amount of gross wages earned in violation of Labor Code § 226
16 (a) (1), accurate total hours worked in violation of Labor Code § 226 (a) (2), correct amount of net
17 wages earned in violation of Labor Code § 226 (a) (5), or accurate number of hours worked at each
18 corresponding hourly rate in violation of Labor Code § 226 (a) (9).

19 51. To the extent that Defendants paid any meal break premium and/or rest break
20 premium payments, Defendants failed to identify such payments on Plaintiff's and Subclass
21 members' wage statements and employment records, and Defendants otherwise failed to provide
22 information on the wage statements sufficient to identify how many premium payments were paid
23 during each pay period, the specific dates worked giving rise to the premium payments owed, or to
24 determine whether such premium payments adequately and/or accurately compensated Plaintiff and
25 Subclass members for any and all premiums owed.

26 52. California Labor Code § 1198 provides that the maximum hours of work and the
27 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
28 applicable IWC Wage Orders. § 1198 further provides that "the employment of any employees for

1 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate
3 time records showing when the employee begins and ends each work period and meal period. At
4 all relevant times, Defendants failed, on a company-wide basis, to keep records of meal period start
5 and stop times for Plaintiff and Subclass members in violation of section 1198.

6 53. California Labor Code section 1174 (d) provides that “every person employing labor
7 in this state shall ... keep a record showing the names and addresses of all employees employed
8 and the ages of all minors” and “keep, at a central location in the state or at the plants or
9 establishments at which employees are employed, payroll records showing the hours worked daily
10 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece
11 rate paid to, employees employed at the respective plants or establishments...” At all relevant
12 times, and in violation of Labor Code § 1174 (d), Defendants willfully failed to maintain accurate
13 payroll records for Plaintiff and Subclass members showing the daily hours they worked and the
14 wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

15 54. Plaintiff and Subclass members are entitled to recover from Defendants the greater
16 of their actual damages caused by Defendants’ failure to comply with California Labor Code § 226
17 (a), or an aggregate penalty not exceeding four thousand dollars \$4,000 per employee, in addition
18 to attorneys’ fees and costs.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY WAGES**

21 **IN VIOLATION OF LABOR CODE § 204**

22 55. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
23 though fully set forth herein.

24 56. “All wages ... earned by any person in any employment are due and payable twice
25 during each calendar month, on days designated in advance by the employer as the regular paydays
26 ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for
27 weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
28 following the close of the payroll period.” Labor Code § 204.

1 57. “In addition to, and entirely independent and apart from, any other penalty provided
2 in this article, every person who fails to pay the wages of each employee as provided in Sections ...
3 204 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars
4 (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or
5 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
6 percent of the amount unlawfully withheld.” Labor Code § 210.

7 58. At all times relevant herein, Defendants engaged in a practice of failing to pay
8 Plaintiff and the Class by the seventh calendar day following the close of the payroll period. Indeed,
9 as discussed above, Plaintiff and the Class are owed wages for unpaid minimum wage, unpaid
10 overtime, meal periods, rest periods and unreimbursed business expenses. At no time during their
11 employment were these outstanding sums ever paid to them. Instead, these outstanding sums
12 continued to accumulate every pay period. Therefore, Plaintiff and the Class were not paid all
13 wages earned by the seventh calendar day following the close of their pay periods.

14 59. As a direct and proximate result of Defendants’ failure to timely pay wages, Plaintiff
15 and the Class are entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

16 **FOURTH CAUSE OF ACTION**
17 **WILLFUL FAILURE TO PAY WAGES**
18 **IN VIOLATION OF LABOR CODE §§ 201-203**

19 60. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
20 though fully set forth herein.

21 61. “If an employer discharges an employee, the wages earned and unpaid at the time of
22 discharge are due and payable immediately.” Labor Code § 201.

23 62. “If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
25 unless the employee has given 72 hours previous notice of his or her intention to quit, in which case
26 the employee is entitled to his or her wages at the time of quitting.” Labor Code § 202.

27 63. “If an employer willfully fails to pay any wages of an employee who is discharged or
28 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the

1 same rate until paid or until an action therefor is commenced.” Labor Code § 203.

2 64. Plaintiff and the Class were not exempt from the requirements of Labor Code §§
3 201-203.

4 65. At no time since Plaintiff's or the Class's separation of employment did Defendants
5 pay them wait-time penalties as required by Labor Code § 203.

6 66. As a direct and proximate result of Defendants' willful failure to pay Plaintiff's and
7 the Class's wages upon their separation of employment, Plaintiff and the Class incurred wait-time
8 penalties in an amount equal to their daily rate of pay over the period that the wages were not paid
9 in an amount subject to proof at trial.

10 **FIFTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION IN VIOLATION OF**

12 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

13 **(AGAINST ALL DEFENDANTS)**

14 67. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
15 though fully set forth herein.

16 68. Defendants are a “person” as defined by California Business & Professions Code
17 sections 17201.

18 69. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
19 unlawful and harmful to Plaintiff, the Class, aggrieved employees and to the general public.
20 Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants'
21 unlawful business practices. Plaintiff and the Class seek to enforce important rights affecting the
22 public interest within the meaning of Code of Civil Procedure section 1021.5.

23 70. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
24 predicated on the violation of any state or federal law.

25 71. The employment practices engaged in by Defendant as plead herein, including
26 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair
27 business practices in violation of Business & Professions Code §§17200, *et seq.*

28 72. As a result of Defendants' unfair business practices, Defendants have reaped unfair

1 benefits and illegal profits at the expense of Plaintiff, the Class and members of the public.

2 73. Pursuant to California Business & Professions Code §§ 17200, et seq. Plaintiff and
3 the Class are entitled to restitution of the wages withheld and retained by Defendants during a
4 period that commences four years prior to the filing of this Complaint; a permanent injunction
5 requiring Defendants to pay all outstanding wages due to Plaintiff, the Class and aggrieved
6 employees; and an award of attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5 and other applicable laws; and an award of costs.

8 **SIXTH CAUSE OF ACTION**
9 **CIVIL PENALTIES IN VIOLATION OF**
10 **LABOR CODE § 2699, ET SEQ.**
11 **(AGAINST ALL DEFENDANTS)**

12 74. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
13 though fully set forth herein.

14 75. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an
15 action against defendants, on behalf of himself and other current or former employees, seeking civil
16 penalties for defendants' violations of the California Labor Code.

17 76. Plaintiff was a aggrieved employee within the meaning of Labor Code §2698, et seq.
18 by virtue of the numerous Labor Code violations he was subjected to as plead herein.

19 77. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
20 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
21 for necessary business expenditures in violation of Labor Code § 2802, failing to furnish compliant
22 wage statements and maintain accurate pay records in violation of § 226, 1174 (d), and 1198, failure
23 to timely pay wages in violation of Labor Code § 204 and willful failure to pay wages in violation of
24 Labor Code § 201-203.

25 78. On December 15, 2022, Plaintiff provided written notice by online filing with the
26 Labor and Workforce Development Agency and by certified mail to Defendants of the specific
27 provisions of the Labor Code alleged to have been violated, including the facts and theories to support
28 the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

79. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

80. As a direct and proximate result of Defendants' California Labor Code violations as set forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

81. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties.

PRAYER FOR RELIEF

Plaintiff and the Class pray for relief and judgment against Defendants as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of \$25,000, exclusive of interest and costs.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representatives of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

(Unreimbursed Business Expenses)

5. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

6. For unreimbursed business expenses and for all actual, consequential, and incidental losses and damages, according to proof;

7. For interest at the same rate as judgments in civil actions, accruing from the date on which Plaintiff and the Class incurred the necessary expenditures or losses pursuant to Labor Code § 2802:

8. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's

1 enforcement of the rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

2 9. For such other relief that the Court deems just and appropriate.

3 **As to the Second Cause of Action**

4 **(Noncompliant Wage Statements and Payroll Records)**

5 10. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
6 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnished
7 compliant, accurate itemized wage statements to Plaintiff and class members and for failure to keep
8 accurate payroll records;

9 11. For consequential and incidental losses and damages according to proof;

10 12. For injunctive relief pursuant to Labor Code § 226 (h);

11 13. For statutory penalties pursuant to Labor Code § 226 (e);

12 14. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's
13 enforcement of the rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

14 15. For such other relief that the Court deems just and appropriate.

15 **As to the Third Cause of Action**

16 **(Failure to Timely Pay Wages)**

17 16. That the Court declare, adjudge, and decree that Defendants violated California Labor
18 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay
19 wages to Plaintiff and class members;

20 17. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully
21 withheld from Plaintiff and class members;

22 18. For all actual, consequential, and incidental losses and damages, according to proof;

23 19. For pre-judgment interest on any unpaid wages from the date such amounts were due,
24 or as otherwise provided by law;

25 20. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
26 as otherwise provided by law; and

27 21. For such other relief that the Court deems just and appropriate.

28 **As to the Fourth Cause of Action**

1 **(Willful Failure to Pay Wages)**

2 22. That the Court declare, adjudge, and decree that Defendants violated California Labor
3 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
4 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff and class members
5 either upon discharge or within 72 hours of their resignation;

6 23. For wait time penalties pursuant to Labor Code § 203;

7 24. For all actual, consequential, and incidental losses and damages, according to proof;

8 25. For pre-judgment interest on any unpaid wages from the date such amounts were due,
9 or as otherwise provided by law;

10 26. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
11 as otherwise provided by law; and

12 27. For such other relief that the Court deems just and appropriate.

13 **As to the Fifth Cause of Action**

14 **(Unfair Competition)**

15 28. That the employment practices engaged in by Defendants as plead herein, including
16 violations of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business
17 practices in violation of Business & Professions Code §§17200, et seq.;

18 29. For restitution of unpaid wages to Plaintiff and all class members and prejudgment
19 interest from the day such amounts were due and payable;

20 30. For the appointment of a receiver to receive, manage and distribute any and all funds
21 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
22 of violations of California Business & Professions Code sections 17200, et seq.;

23 31. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
24 Code of Civil Procedure § 1021.5; and

25 32. For such other and further relief as the Court deems just and appropriate.

26 **As to the Sixth Cause of Action**

27 **(Civil Penalties under the PAGA)**

33. That the Court declare, adjudge, and decree that Defendants violated all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

34. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

35. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

36. For pre-judgment and post-judgment interest as provided by law; and

37. For such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: February 20, 2023

By:



Kelly M. Hatfield
Gabriel J. Pimentel
Attorneys for the Plaintiff