

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MIRIAM MORENO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BEACON DAY SCHOOL, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO.: 30-2022-01296662-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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**

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Miriam Moreno (“Plaintiff”), on behalf of herself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“Complaint”) against Beacon Day School, Inc., a California corporation; and Does 1 through 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this action for recovery of unpaid wages, penalties, and unreimbursed expenses 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.*, California Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 5 (“Wage Order 5”) in addition to seeking declaratory relief, injunctive 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 Defendants’ principal place of business is located in the County of Orange. Defendants own, maintain offices, transact business, have an agent or agents within the County of Orange, and/or otherwise are found within the County of Orange, and Defendants are within the jurisdiction of this Court for purposes of service of process.

THE 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, 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

1 Defendants as a non-exempt employee in Orange County. Plaintiff was, and is, a victim of
2 Defendants' policies and/or practices complained of herein, lost money and/or property, and has
3 been deprived of the rights guaranteed to her by California Labor Code §§ 201-204, 226 *et seq.*,
4 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*,
5 California Business and Professions Code § 17200 *et. seq.*, and Wage Order 5 which sets
6 employment standards for professional, technical, clerical, mechanical and similar occupations,
7 which includes teachers and their assistants.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
10 continue to do) business within the County of Orange by operating a private school, and employed
11 Plaintiff and other, similarly situated non-exempt employees within Orange County and the state
12 of California and, therefore, were (and are) doing business in Orange County and the State of
13 California.

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

22 6. Plaintiff is informed and believes, and thereon alleges, that all Defendants,
23 however designated whether by real or fictitious name, were and are in some manner responsible
24 for the events, happenings, occurrence and instrumentalities upon and about which this action is
25 made. At all relevant times mentioned herein, Defendants were and are the employers of Plaintiff
26 and all similarly situated employees.

27 7. Plaintiff is further informed and believes, and thereon alleges, that each of the
28 Defendants herein, whether designated by real or fictitious name, are, and at all times relevant

1 hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as
2 well as the agents of all Defendants, and in doing things and acts herein alleged and complained
3 of or in failing to do that which they should have done, were acting within the scope of
4 employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified
5 each and every one of the acts or omissions alleged herein.

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

11 **GENERAL FACTUAL ALLEGATIONS**

12 9. Defendants are a private school specializing in the education and care of children
13 with autism and related disorders across Southern California. Plaintiff was employed by
14 Defendants as a non-exempt “Behavioral Interventionist” from May 9, 2022 to October 25, 2022.
15 Plaintiff’s job duties included supervising and otherwise managing children in her care. Unless
16 otherwise stated, all allegations contained herein occurred during Plaintiff’s employment with
17 Defendants.

18 10. During Plaintiff’s employment with Defendants, Defendants utilized a
19 timekeeping system, which upon information and belief, resulted in Plaintiff not being
20 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
21 Specifically, Plaintiff and other non-exempt employees clocked in and out for work each day
22 using Defendants’ timekeeping system which recorded the time to the minute. However, for
23 payroll purposes, Defendant rounded these timekeeping entries to quarter-hour increments in a
24 non-neutral manner resulting in Plaintiff and non-exempt employees not being paid all minimum
25 and overtime wages owed to them. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th
26 638, 654 (“[I]f an employer, as in this case, can capture and has captured the exact amount of
27 time an employee has worked during a shift, the employer must pay the employee for “all the
28 time” worked.”)

1 11. Plaintiffs routinely worked in excess of 8 hours per workday but did not on all
2 occasions receive overtime compensation equal to one and a half times her regular rate of pay for
3 working overtime hours. Defendants paid Plaintiff and other non-exempt employees non-
4 discretionary incentive pay and/or other forms of pay that are not excludable from an employee's
5 "regular rate" of compensation including but not limited to payments for remaining with
6 Defendants for 90 days as a retention bonus (hereinafter referred to as "Incentive Pay"). As a
7 result of paying Plaintiff Incentive Pay, Defendants failed to properly calculate the regular rate of
8 pay, resulting in unpaid overtime wages, and to the extent that Defendants ever paid meal and/or
9 rest period premium payments, such premium payments were also underpaid during time periods
10 when Incentive Pay was also earned.

11 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
12 required 30-minute meal periods commencing before the end of the fifth hour of work.
13 Specifically, Defendant required Plaintiff and other non-exempt employees to care for students
14 and otherwise remain on-duty throughout the workday. As a result of Defendant's
15 policies/practices, Defendant failed to provide Plaintiff and other non-exempt employees timely
16 duty-free meal periods. In addition, Defendants failed to provide a second meal period for shifts
17 exceeding 10 hours. Defendants also failed to provide Plaintiff and other non-exempt employees
18 with an additional hour of premium pay for each instance in which a violation occurred and/or
19 did not pay such premium at the correct rate of pay, as required by Labor Code § 226.7.

20 13. Defendants also failed to provide Plaintiff and other non-exempt employees with
21 all required duty-free rest periods because, upon information and belief, Defendants did not
22 maintain a lawful rest period policy and the nature of the work being performed by Plaintiff and
23 other non-exempt employees did not permit for duty-free rest periods while working. Assuming
24 *arguendo* that Plaintiff and Defendants entered into a lawful written on-duty meal period
25 agreement, such an agreement inherently concedes that the nature of Plaintiff's work precluded
26 duty-free rest periods. Defendants also failed to provide Plaintiff and other non-exempt
27 employees with an additional hour of premium pay for each workday in which a rest period
28 violation occurred, as required by Labor Code § 226.7.

1 14. Defendants required Plaintiff and other non-exempt employees to use their
2 personal cell phones to clock in and out and to receive daily calls from the transportation
3 coordinator to help coordinate the students. Despite requiring employees to incur these necessary
4 business expenses, Defendants failed to compensate Plaintiff and other non-exempt employees
5 for a reasonable portion of their monthly cell phone expenses and home internet use during remote
6 instruction. *See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144
7 (holding that employer who requires employees use their personal cell phone for business
8 purposes must reimburse a reasonable percentage of the employee's cell phone bill).

9 15. As a result of Defendants' failure to pay all minimum and overtime wages as well
10 as meal and rest period premium wages owed, Defendants maintained inaccurate payroll records,
11 and issued inaccurate wage statements and failed to pay all final wages to Plaintiff and other non-
12 exempt employees upon their separation of employment.

13 **CLASS ACTION ALLEGATIONS**

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

- 16 a. The Minimum Wage Class consist of all Defendants' current and former non-
17 exempt employees in California who were subject to Defendants' timekeeping
18 policies and/or practices, during the four years immediately preceding the filing of
19 this action through the present.
- 20 b. The Overtime Class consists of all of Defendants' current and former non-exempt
21 employees in California who: (i) worked more than eight (8) hours per day and/or
22 forty (40) hours per week and were subject to Defendants' timekeeping
23 policies/practices; and/or (ii) received Incentive Pay and worked overtime hours
24 during the corresponding time period, during the four years immediately preceding
25 the filing of this action through the present.
- 26 c. The Meal Period Class consists of all Defendants' current and former non-exempt
27 employees in California who: (i) worked at least one shift in excess of 5.0 hours
28 without a meal period of at least 30 minutes commencing prior to the end of the

fifth hour of work; and/or (ii) received a meal period premium in a pay period where their regular rate of pay exceeded their base hourly rate, 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 Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who were required use their personal cell phone or home internet 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 Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.

g. The Waiting Time Class consists of all formerly employed members of the Minimum Wage Class, Overtime 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.

17. **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.

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

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Minimum Wage and Overtime 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; and
- v. Whether Defendants failed to reimburse members of the Expense Reimbursement Class for all necessary business expenses;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class;
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful; and

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

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff, like the members of the Classes, was employed by Defendants in California during the applicable statute of limitations period and was deprived of all minimum wages owed, overtime wages owed, was not provided all legally required meal and rest periods, was not reimbursed for

all necessary business expenses, did not receive accurate, compliant wage statements, and was not paid all final wages owed at the time of separation of employment.

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

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

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

5 **FIRST CAUSE OF ACTION**

6 **MINIMUM WAGE VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

9 24. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
10 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
11 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
12 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
13 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
14 wages and interest accrued thereon.

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

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

25 27. As a direct and proximate result of Defendants' unlawful conduct as alleged
26 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
27 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
28

entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 5.

28. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 1194, 1197, and 1198, Wage Order 5, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

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

32. The foregoing policies and practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for

1 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
2 penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
3 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed in their affirmative obligation to provide all of their non-exempt employees in California,
10 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
11 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
12 Defendants' violations, Defendants did not in all instances pay an additional hour of pay to
13 Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in
14 accordance with California Labor Code §§ 204, 210, 226.7, and 512.

15 35. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 5,
17 including interest thereon, statutory penalties, civil penalties, and costs of suit.

18 **FOURTH CAUSE OF ACTION**

19 **REST PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 37. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
23 establish the right of employees to be authorized and permitted to take a paid rest period of at
24 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

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

28 ///

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

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

42. At all relevant times herein, Defendants were subject to Labor Code § 2804, which 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.”

43. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 5 § 9, Plaintiff and members of the Classes were damaged in sums, which will be shown according to proof.

44. 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)

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

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and other non-exempted employees with complete and accurate wage statements that included, among other requirements, all overtime wages earned, gross wages earned, and net wages earned, and the incorrect address for the legal entity that employed them in violation of Labor Code § 226 *et seq.*

47. 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 owed, and deprived Plaintiff 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 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.*

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 of 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 Classes all final wages due to them at the time of their separation including, among other things, underpaid overtime and meal and rest period premiums. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

54. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff and the Classes lawful rest periods; failing to reimburse Plaintiff and the Classes for all necessary business expenses; failing to furnish accurate and complete itemized wage statements in violation of § 226 *et seq.*; and failing to pay all final wages at the time of separation from employment.

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

56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of

monies, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

60. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each

1 subsequent violation per employee per pay period for those violations of the Labor Code for
2 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 3 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
4 wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194,
5 1194.2, and 1197;
- 6 b. Failing to pay Plaintiff and other aggrieved employees all overtime
7 compensation earned in violation in Labor Code §§ 204, 510, 558, 1194 and
8 1198;
- 9 c. Failing to provide meal periods as required by law and failing to pay meal
10 period premiums and/or not paying the meal period premium at the correct rate
11 of pay to Plaintiff and other aggrieved employees at their respective regular
12 rates of compensation for meal period violations in violation of Labor Code §§
13 226.7, 512, and 558;
- 14 d. Failing to authorize and permit Plaintiff and other aggrieved employees to take
15 all of their statutorily mandated, duty-free rest periods and failing to pay rest
16 period premiums to Plaintiff and other aggrieved employees at these
17 employees' respective regular rates of pay for rest period violations in
18 violation of Labor Code §§ 226.7, 516, and 558;
- 19 e. Failing to reimburse Plaintiff and other aggrieved employees for all work-
20 related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- 21 f. Failing to furnish Plaintiff and other aggrieved employees with accurate and
22 compliant itemized wage statements in violation of Labor Code § 226;
- 23 g. Failing to timely pay all final wages due to Plaintiff and other aggrieved
24 employees in violation of Labor Code §§ 201-203;
- 25 h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least
26 twice during each calendar month in violation of Labor Code § 204; and
27
28

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

61. On December 14, 2022, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her 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 herself 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 December 14, 2021 and the present.

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

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself 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;

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

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

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

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

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

11 11. Upon the Eight Cause of Action for restitution to Plaintiff and members of the
12 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of California Business and Professions Code
14 § 17200 *et seq.*;

15 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor
17 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
18 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
19 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
20 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
21 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
22 (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor
23 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
24 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
25 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
26 employee per pay period for those violations of the Labor Code for which no civil penalty is
27 specifically provided, based on the violations of the Labor Code sections identified in Paragraph
28 60 (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 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: February 21, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: February 21, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorney for Plaintiff