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

CHRISTIAN CRUZ as an individual, and on
 behalf of all others similarly situated,

Plaintiff,

v.

CHARLES E. THOMAS COMPANY, INC., a
 California corporation; and DOES 1 through
 100, inclusive,

Defendants.

Case No. 22STCV37722

**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, AND
 1198);**
- (3) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7 AND 516);**
- (5) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (6) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226, *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
 PROF CODE § 17200, *et seq.*); AND**
- (8) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS
 GENERAL ACT (LABOR CODE §
 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Christian Cruz (hereinafter “Plaintiff”), as an individual, and on behalf of all
2 others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against Charles E. Thomas Company, Inc., a California corporation, and DOES 1 to
4 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this First Amended Class and Representative Action
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 226 *et. Seq.*, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order
10 9 (“Wage Order 9”), in addition to seeking declaratory relief and restitution. This Complaint is
11 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was and is a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698

1 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”),
2 and Wage Order 9, which sets employment standards for the transportation industries.

3 4. Plaintiff is informed and believes, and based thereon allege, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 continue to do) business by transporting commodities in California and the United States,
6 employed Plaintiff within Los Angeles County and the state of California and, therefore, were
7 (and are) doing business in Los Angeles County and the State of California.

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

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

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

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and

1 all members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff worked for Defendants from approximately February 2009 until
4 approximately August 18, 2023. His most recent position was that of a Senior Service Technician.
5 Plaintiff's job duties generally revolved around service and maintenance of gas stations around
6 Southern California.

7 10. Plaintiff had no set schedule. Rather, he would work anywhere from 45-65 hours
8 per week depending on work demands. Occasionally, Plaintiff would work all seven days a in a
9 workweek, and sometimes more than seven days straight. As discussed below, Plaintiff worked
10 considerably more hours than he was credited for on his wage statements. Plaintiff was paid at
11 a rate of approximately \$40.00 per hour at the time of his separation with Defendants.

12 11. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and
13 other aggrieved employees were not paid for all hours worked. Furthermore, Plaintiff and other
14 aggrieved employees routinely worked overtime hours but did not receive overtime compensation
15 equal to one and one-half times their regular rate of pay for all overtime hours worked. Plaintiff
16 would consistently notice that hours that he worked were missing from his wage statements.
17 Plaintiff brought this to the attention of his supervisors and the payroll department on countless
18 occasions, however the practice never changed. Plaintiff's inquiries regarding the discrepancies
19 between the hours he worked and the hours he was credited for, whether verbally or via e-mail,
20 were consistently evaded or outright ignored. Furthermore, Plaintiff would consistently be
21 badgered with work related calls and communications on his days off, which he would attend to
22 from anywhere between a few minutes to multiple hours, but was never provided any sort of
23 compensation for this off-the-clock work. Additionally, Plaintiff would sometimes work seven
24 days in a workweek, thus entitling him to statutory double time compensation, however despite
25 his entitlement to such pay, Defendants failed to pay Plaintiff for all statutory double time hours
26 worked. Consequently, due to Defendants' unlawful timekeeping and payment policies and
27 practices that failed to compensate for all hours worked, Plaintiff and other aggrieved employees
28 have been deprived of all required minimum, overtime wages, and double time wages earned.

1 12. In addition, Plaintiff and other aggrieved employees were not provided all legally
2 compliant meal periods due to Defendants' meal period policies and practices which fail to
3 provide a timely 30-minute duty-free first meal period (i.e. a first meal period commencing before
4 the end of the fifth hour of work). Plaintiff estimates that he did not receive a compliant first meal
5 period, whether it be shortened, missed, or interrupted, on at least 90% of the shifts that he
6 worked. For example, shortened meal periods were a common occurrence as Plaintiff and other
7 aggrieved employees were made to adhere to strict schedules and deadlines that caused them to
8 be pressured to get back to work as soon as possible after beginning their meal periods.
9 Furthermore, even on those occasions where Plaintiff and other aggrieved employees did receive
10 meal periods, they were almost always interrupted and/or on-duty. Plaintiff would have to discuss
11 work related matters with his supervisors and coworkers off-the-clock during his meal periods
12 and make sure that he did not leave his truck unattended making his meal periods inherently not
13 duty-free. Finally, for the vast majority of his employment, Plaintiff was not afforded to take any
14 time to exercise a meal period whatsoever, instead being made to simply eat whatever snacks and
15 food he had with him while driving between gas stations. Plaintiff's shortened, late, and on-duty
16 meal periods were a direct result of Defendants' policy/practice. Defendants also failed to provide
17 second meal periods when Plaintiff and other aggrieved employees worked shifts in excess of
18 10.0 hours. Plaintiff worked in excess of 10 hours nearly every shift during his employment, but
19 he cannot recall receiving a second meal period. In addition, on those occasions when Plaintiff
20 and the other aggrieved employees were not provided with all legally compliant meal periods to
21 which they were entitled, Defendants failed to compensate them with the required meal period
22 premiums, as mandated by Labor Code § 226.7.

23 13. Defendants also failed to authorize and permit Plaintiff and other aggrieved
24 employees to take all statutorily mandated rest periods. Plaintiff and the other employees would
25 be made to work through their rest periods to meet the intense workloads imposed on them by
26 Defendants. Due to the overwhelming workload and the company culture, Plaintiff and the other
27 aggrieved employees were generally not permitted to exercise any compliant duty-free rest
28 periods. Additionally, Defendants' policy/practice prohibited Plaintiff and other aggrieved

employees from leaving their trucks unattended during their rest periods, and therefore, failed to authorize and permit Plaintiff and other aggrieved employees to take duty-free paid rest periods for every four-hour period worked, or major fraction thereof. Further, upon information and belief during at least a portion of the relevant time period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not authorized or permitted to Plaintiff and the other aggrieved employees.

14. Plaintiff and other aggrieved employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff and other aggrieved employees non-discretionary bonuses, and other forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as “Incentive Pay”). Despite Defendants’ payment of Incentive Pay to Plaintiff and other aggrieved employees, Defendants failed to properly calculate the regular rate of pay, thereby causing Plaintiff and other aggrieved employees to be underpaid all required overtime wages. For example, Plaintiff’s wage statement for the pay period ending on June 25, 2022, shows that Plaintiff worked 88.25 hours including 24.25 hours of overtime paid at 1.5 times Plaintiff’s hourly rate of pay (i.e., \$60.00). However, in the same pay period Plaintiff also received a \$109.75 “On Call Bonus”. Therefore, Plaintiff’s overtime rate of pay of pay when including Incentive Pay (which must be properly included in the overtime rate of pay) should have been approximately \$62.57. This practice was pervasive throughout Plaintiff’s employment as he routinely received these nondiscretionary “On Call Bonus” payments. However, the “On Call Bonus” payments, were not factored in by Defendants when calculating Plaintiff’s regular rate of pay during those pay periods when he received “On Call Bonus” payments. This practice resulted in a systemic underpayment of overtime wages, in addition to the time-shaving as described above.

15. Additionally, Plaintiff and other aggrieved employees were constantly required to be “on-call” when they weren’t working their regularly scheduled hours, but were not paid all

1 minimum wages, overtime, and/or double time hours for this necessary time worked. Plaintiff
2 and other aggrieved employees would be on-call at all hours of the day, and would often have to
3 attend to work-related matters while on-call for hours at a time. However, instead of properly
4 compensating Plaintiff and other aggrieved employees for these on-call hours worked,
5 Defendants would simply elect to pay them an “On-Call Bonus” (as described above) of around
6 \$100 per week, which was vastly under representative of the amount of hours that they were
7 necessarily performing work on call. As a result of Defendants’ policies/practices regarding this
8 on-call work, Defendants failed to pay all requisite minimum, overtime, and/or double time wages
9 owed to Plaintiff and other aggrieved employees.

10 16. Defendants also maintained inaccurate payroll records, and issued inaccurate and
11 deficient wage statements, in part due to Defendant’s failure to pay all minimum and overtime
12 wages, and meal and rest period premium wages .

13 17. Defendants also failed to pay all wages owed to Plaintiff and the other aggrieved
14 employees upon their separation of employment from Defendants, in part due to Defendants’
15 failure to pay all minimum and overtime wages, and meal and rest period premium wages.

16 18. Additionally, Defendants failed to meet its obligation to provide paid sick leave to
17 Plaintiff and other aggrieved employees under Labor Code § 245.5(b) which requires that
18 employers authorize and permit its employees who worked 30 or more days within a year to
19 accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of
20 employment. Despite meeting all of the statutory requirements for being able to accrue and utilize
21 paid sick leave, Plaintiff and other aggrieved employees were not provided paid sick leave on all
22 of those occasions when they needed to take a “sick day” in violation of Labor Code § 245.5(b),
23 and did not provide sick pay at the correct regular rate.

24 19. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
25 by failing to provide Plaintiff and other aggrieved employees written notices, in the language
26 normally used to communicate employment related information to the employees, containing
27 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
28 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the

1 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
2 employer; vii) identifying information for the employer's workers' compensation insurance
3 carrier; and viii) information informing the employee of their right to accrue and use paid sick
4 leave.

5 **CLASS ACTION ALLEGATIONS**

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

- 8 a. The Minimum Wage Class consists of all current and former non-exempt
9 employees of Defendants in California who were subject to Defendants'
10 timekeeping systems and/or practices, during the four years immediately
11 preceding the filing of this lawsuit through the present.
- 12 b. The Overtime Wage Class consists of all current and former non-exempt
13 employees of Defendants in California who worked overtime hours and: (i) were
14 subject to Defendants' timekeeping systems and/or practices; and/or (ii) received
15 Incentive Pay and worked overtime during a corresponding pay period, during the
16 four years immediately preceding the filing of the Complaint through the present.
- 17 c. The Meal Period Class consists of all current and former non-exempt employees
18 of Defendants in California in California who: worked at least one shift in excess
19 of 5.0 hours without a meal period of at least 30 minutes in duration commencing
20 prior to the conclusion of the fifth hour of work, and who do not have a
21 corresponding meal period premium payment made for such shifts and/or (ii)
22 worked at least one shift in excess of 10.0 hours while performing work for
23 Defendants in California without a second meal period of at least 30 minutes in
24 duration commencing prior to the conclusion of the tenth hour of work, and who
25 do not have a corresponding meal period premium payment made for such shifts
26 during the four years preceding the filing of this lawsuit through the present.
27
28

- 1 d. The Rest Period Class consists of all current and former non-exempt employees of
2 Defendants in California who worked at least one shift of 3.5 hours or more, during
3 the four years immediately preceding the filing of the Complaint through the
4 present;
- 5 e. The Wage Statement Class consists of all members of the Minimum Wage Class,
6 Overtime Class, Rest Period Class, and/or Meal Period Class who received a wage
7 statement from Defendants during the one year immediately preceding the filing
8 of this lawsuit through the present.
- 9 f. The Waiting Time Class consists of all former non-exempt employees of
10 Defendants in California who were subject to Defendants' timekeeping systems
11 and/or practices, during the three years immediately preceding the filing of this
12 lawsuit through the present.

13
14 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
15 joinder of all members would be unfeasible and not practicable. The membership of the Classes
16 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
17 number greater than one hundred (100) individuals. The identity of such membership is readily
18 ascertainable via inspection of Defendants' employment records.

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

- 23 i. Whether Defendants paid all minimum wages owed for all hours worked to
24 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
25 1194.2, and 1197;
- 26 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
27 not limited to, §§ 510 and 1194 and Wage Order 9 by requiring members of the
28 Overtime Wage Class to perform overtime work and not paying for said work in

- 1 accordance with the overtime laws of the State of California;
- 2 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
- 3 properly compensate members of the Minimum Wage Class and the Overtime
- 4 Wage Class;
- 5 iv. Whether Defendants provided all legally compliant meal periods to members of
- 6 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 7 v. Whether Defendants provided all legally compliant rest periods to members of the
- 8 Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 9 vi. Whether Defendants provided accurate, itemized wage statements to members of
- 10 the Classes; and
- 11 vii. Whether Defendants' policies and/or practices for the timing and amount of
- 12 payment of final wages to members of the Waiting Time Class at the time of
- 13 separation from employment were lawful.
- 14

15 23. **Predominance of Common Questions:** Common questions of law and fact

16 predominate over questions that affect only individual members of the Classes. The common

17 questions of law set forth above are numerous and substantial and stem from Defendants' policies

18 and/or practices applicable to each individual class member, such as Defendants' uniform

19 timekeeping policies and practices, meal and rest period policies and practices, wage statement

20 policies and practices, and the policies and practices regarding the timely payment of final wages.

21 As such, the common questions predominate over individual questions concerning each

22 individual class member's showing as to his or her eligibility for recovery or as to the amount of

23 his or her damages.

24 24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because

25 Plaintiff was employed by Defendants as a non-exempt employee in California during the

26 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged

27 herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal/rest period and

28 timekeeping policies and practices, was provided inaccurate wage statements, and was not paid

all wages earned at the time of his separation of employment.

25. **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.

26. **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 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 (as defined herein) are maintainable as a Class under § 382 of the Code of
5 Civil Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

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

10 28. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
11 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
12 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
13 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
14 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
15 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
16 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
17 Wage Class for all hours actually worked including, but not limited to, all hours he was subject
18 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
19 and Wage Order 9.

20 29. 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 balance of the unpaid wages as well as liquidated damages in an amount
24 equal to the wages due and interest thereon.

25 30. 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

1 a result of Defendants' violations of the California Labor Code and Wage Order 9.

2 31. Defendants' practice and uniform administration of corporate policy regarding
3 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
4 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
5 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
6 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
7 Procedure § 1021.5.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **(AGAINST ALL DEFENDANTS)**

11 32. Plaintiff re-allege and incorporates by reference all previous paragraphs.

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

16 34. At all times relevant herein, Defendants were required to properly compensate
17 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
18 Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay overtime
19 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
20 in the Wage Order.

21 35. The foregoing policies and practices are unlawful and create entitlement to
22 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
23 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
24 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 9, and
25 Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

38. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

40. Wage Order 9, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a duty-free rest period of at least ten (10) minutes for each four (4) hour period worked or major fraction thereof.

41. Due to their unlawful rest period policies and/or practices, Defendants did not authorize and permit Plaintiff and the Rest Period Class to take all duty-free rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the Rest Period Class at their respective regular rate of pay for each violation in accordance with California Labor Code § 226.7.

42. The foregoing violations create an entitlement to recovery by Plaintiff and the Rest

1 Period Class in a civil action for the unpaid amount of rest period premiums owing, including
2 interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 9, California Labor
3 Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

4 **FIFTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(AGAINST ALL DEFENDANTS)**

7 43. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

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

14 45. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
15 all final wages due to them at the time of their separation including, among other things, unpaid
16 and/or underpaid overtime and minimum wages owed, and meal and rest period premium wages.
17 Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform
18 policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all
19 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
20 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
21 Labor Code § 203.

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

27 ///

28 ///

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

47. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

48. 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 the Wage Statement Class with complete and accurate wage statements reflecting the accurate number of hours worked, meal period premiums, and rest period premiums in violation of Labor Code § 226 *et seq.*

49. Defendants' failures in furnishing Plaintiff and 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 minimum wages, overtime wages, meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

50. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage Statement Class 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
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

51. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

52. 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 minimum and overtime wages, provide all required meal periods and authorize and permit all rest periods, or pay premium payments in lieu thereof, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages due upon separation of

1 employment.

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

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

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(AGAINST ALL DEFENDANTS)**

21 57. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
22 fully set forth herein.

23 58. Defendants have committed several Labor Code violations against Plaintiff,
24 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
25 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
26 employees, brings this representative action against Defendants to recover the civil penalties due
27 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
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1 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
2 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
3 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
4 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
5 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
6 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
7 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
8 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
9 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
10 subsequent violation per employee per pay period for those violations of the Labor Code for which
11 no civil penalty is specifically provided, based on the following Labor Code violations:

- 12 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
13 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
14 1182.12, 1194, 1194.2, 1197, and 1198;
- 15 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
16 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
17 1194, and 1198;
- 18 c. Failing to authorize and permit all legally required rest periods, and failure to
19 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
20 aggrieved employees at the regular rate of compensation in violation of Labor
21 Code §§ 226.7, 516, 558, and 1198;
- 22 d. Failing to provide all legally required meal periods, and failure to pay meal
23 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
24 employees at the regular rate of compensation in violation of Labor Code §§
25 226.7, 512, 558, and 1198;
- 26 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
27 employees with complete, accurate, itemized wage statements in violation of
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Labor Code § 226;

- f. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to permit and authorize Plaintiff and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- i. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiff and other non-exempt employees in violation of Labor Code § 2810.5; and
- j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

59. On December 2, 2022, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 57 (a)-(j). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf

1 this suit brought against Defendants, as follows:

- 2 1. For an order certifying the proposed Classes;
- 3 2. For an order appointing Plaintiff as representative of the Classes;
- 4 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 5 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
6 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
7 1198 and Wage Order 9 § 5(A);
- 8 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
9 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and
10 Wage Order 9 § 5(A);
- 11 6. Upon the Third Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 13 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
14 special damages according to proof pursuant to Labor Code §§ 226., 516, and 558;
- 15 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
16 Labor Code §§ 201-203;
- 17 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
18 226;
- 19 10. Upon the Seventh Cause of Action, for restitution to Plaintiff of all money and/or
20 property unlawfully acquired by Defendants by means of any acts or practices declared by this
21 Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 22 11. Upon the Eighth Cause of Action, for (1) \$100.00 for each initial violation for each
23 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
24 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
25 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
26 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
27 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
28 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent

violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5

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

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §226, and Code of Civil Procedure § 1021.5; and

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

Dated: March 14, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: March 14, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

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PROOF OF SERVICE

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

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On March 14, 2023 I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY CASE ANYWHERE) I caused to be transmitted the document(s) described herein via CaseAnywhere listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 14, 2023 at Redondo Beach, California.



Ethan C. Surls

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