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SALVADOR CORTEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SALVADOR CORTEZ, as an aggrieved
employee and Private Attorney General,

Plaintiff,

vs.

DIRECT PAINTING & DECORATING,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: **23STCV07806**

**REPRESENTATIVE ACTION
COMPLAINT**

DEMAND FOR TRIAL BY JURY

**(1) Violation of Cal. Labor Code § 2699,
(Private Attorneys General Act)**

1 Plaintiff SALVADOR CORTEZ (“Plaintiff”), as an aggrieved employee and Private
2 Attorney General, based upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendant DIRECT PAINTING &
7 DECORATING, INC. and DOES 1 THROUGH 50 (hereinafter also collectively referred to as
8 “Defendants”) as a representative action on behalf of himself and certain other current and former
9 non-exempt employees of Defendants against whom one or more of the alleged violations was
10 committed (hereinafter collectively referred to as the “Aggrieved Employees”) pursuant to
11 California Labor Code sections 2698, et seq. Plaintiff is an aggrieved employee against whom
12 one or more of the alleged violations was committed. The civil penalties sought by Plaintiff
13 exceed the minimal jurisdiction limits of the Superior Court and will be established according to
14 proof at trial.

15 2. The Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
17 except those given by statute to other courts. The statutes under which this action is brought do
18 not specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over Defendants because, upon information and belief,
20 Defendants are citizens of California, have sufficient minimum contacts in California, or
21 otherwise intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play and
23 substantial justice.

24 4. Venue is proper in this Court because, upon information and belief, Defendants
25 maintain offices, have agents, and/or transact business in the State of California, County of Los
26 Angeles.

27 **PARTIES**

28 5. Plaintiff Salvador Cortez is an individual residing in the County of Los Angeles,

1 State of California.

2 6. Defendant Direct Painting & Decorating, Inc., is and at all times herein mentioned
3 was, a corporation organized and existing under the laws of the State of California, and registered
4 to do business in the state of California.

5 7. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
6 and therefore sues these defendants by such fictitious names. The Doe defendants may be
7 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
8 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
9 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at
10 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
11 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
12 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
13 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
14 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged
15 were proximately caused by its conduct. Direct Painting & Decorating, Inc. and Doe Defendants
16 1 through 50 are collectively referred to herein as "Defendants."

17 8. Defendants are and at all times herein mentioned were, (a) conducting business in
18 the County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent with
19 the California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

20 9. Plaintiff further alleges that Defendants, directly or indirectly controlled or
21 affected the working conditions, wages, working hours, and conditions of employment of Plaintiff
22 and the Aggrieved Employees so as to make each of said Defendants employers and employers
23 jointly liable under the statutory provisions set forth herein.

24 **GENERAL ALLEGATIONS**

25 10. Defendants are a Painting Contractors.

26 11. Defendants employed Plaintiff to work as a Painter from approximately December
27 2012 to April 2022.

28 12. At all relevant times set forth herein, Defendants employed Plaintiff and the

Aggrieved Employees as hourly-paid or non-exempt employees.

13. Throughout the time period involved in this case, Defendants had the authority to hire and terminate Plaintiff and the Aggrieved Employees; to directly or indirectly control work rules, working conditions, wages, working hours, and conditions of employment of Plaintiff and the Aggrieved Employees; and to hire and terminate the employment of Plaintiff and the Aggrieved Employees.

14. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

15. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring Plaintiff and the Aggrieved Employees to work off the clock without compensation, thereby failing to pay them for all hours worked, including minimum and overtime wages. Defendants failed to accurately report and record all time worked by Plaintiff and the Aggrieved Employees resulting in the systematic underpayment of wages to Plaintiff and the Aggrieved Employees including minimum and overtime wages. Defendants also implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees. In addition, Defendants routinely failed to permit Plaintiff and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of California law. Defendants also failed to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related expenses, and failed to pay reporting wages.

16. Throughout the time period involved in this case, Defendants have implemented policies and practices which failed to provide Plaintiff and the Aggrieved Employees with timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish control over Plaintiff and the Aggrieved Employees during their meal periods, regularly failed to permit Plaintiff and the Aggrieved Employees a reasonable opportunity to take their meal periods, and

regularly impeded or discouraged Plaintiff and the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of meal periods taken by Plaintiff and the Aggrieved Employees.

17. Throughout the time period involved in this case, Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take meal periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of meal periods for Plaintiff and the Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in a way that prohibited them from taking timely and duty-free meal periods, and to require Plaintiff and the Aggrieved Employees to work through their meal periods, for which they were not compensated.

18. Throughout the time period involved in this case, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages for meal periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled to receive all meal periods or payment of one additional hour of pay at their regular rate of pay when a meal period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide legally compliant meal periods to Plaintiff and the Aggrieved Employees and routinely failed to pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

19. Throughout the time period involved in this case, Defendants have implemented policies and practices which prohibited Plaintiff and the Aggrieved Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,

1 permit, and provide such rest breaks in the middle of each work period.

2 20. Throughout the time period involved in this case, Defendants did not adequately
3 inform Plaintiff and the Aggrieved Employees of their right to take rest periods under California
4 law. Moreover, Defendants systematically disregarded their own written policies regarding the
5 provision and timing of rest periods for Plaintiff and the Aggrieved Employees. Instead,
6 Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in
7 a way that regularly prohibited them from taking timely and duty free rest periods, and to regularly
8 require Plaintiff and the Aggrieved Employees to work through their rest periods.

9 21. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
10 and the Aggrieved Employees premium wages for rest periods that were missed, late, interrupted,
11 or shortened in violation of California law. Defendants knew or should have known that Plaintiff
12 and the Aggrieved Employees were entitled to receive all rest periods or payment of one
13 additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or
14 interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit
15 Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failed to pay one
16 additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of pay when
17 a rest period was missed, short, late and/or interrupted.

18 22. Throughout the time period involved in this case, Defendants regularly required
19 Plaintiff and the Aggrieved Employees to perform work off the clock. Although Defendants
20 prohibited overtime, Defendants still regularly required that Plaintiff and the Aggrieved
21 Employees complete all of their assigned duties. To do so, Plaintiff and the Aggrieved Employees
22 were regularly required to perform work off the clock for which they were not compensated.

23 23. Throughout the time period involved in this case, Defendants implemented policies
24 that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time
25 worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees all wages owed.

26 24. Throughout the time period involved in this case, Plaintiff and the Aggrieved
27 Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

28 25. Throughout the time period involved in this case, Defendants regularly failed to

1 pay all overtime compensation owed to Plaintiff and the Aggrieved Employees when they worked
2 in excess of eight (8) hours in a single work day and/or forty (40) hours in a single work week, or
3 in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a single work
4 week. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were
5 entitled to receive certain wages for overtime compensation and that they were not receiving
6 wages for overtime compensation.

7 26. Throughout the time period involved in this case, Defendants failed to pay
8 overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based on regular
9 rates of pay correctly calculated to include all applicable remuneration.

10 27. Throughout the time period involved in this case, Defendants regularly failed to
11 pay Plaintiff and the Aggrieved Employees at least minimum wages for all hours worked.
12 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
13 to receive at least minimum wages for all hours worked and that they were not receiving at least
14 minimum wages for all hours worked. Defendants' failure to pay minimum wages included, *inter*
15 *alia*, failing to pay Plaintiff and the Aggrieved Employees at the required minimum wage pursuant
16 to California law, requiring Plaintiff and the Aggrieved Employees to perform work off the clock
17 and failing to correctly report all time worked that resulted in the systematic underpayment of
18 wages to Plaintiff and the Aggrieved Employees.

19 28. Throughout the time period involved in this case, Defendants regularly failed to
20 pay Plaintiff and the Aggrieved Employees all wages owed to them upon discharge or resignation.
21 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
22 to receive all wages owed to them upon termination within the time permissible under California
23 Labor Code section 202. Plaintiff and the Aggrieved Employees did not receive payment of all
24 final wages owed to them upon discharge or resignation, including overtime compensation and
25 minimum wages within any time permissible under California Labor Code section 202.

26 29. Throughout the time period involved in this case, Defendants regularly failed to
27 pay Plaintiff and the Aggrieved Employees all wages within any time permissible under
28 California law, including, *inter alia*, California Labor Code section 204. Defendants knew or

1 should have known that Plaintiff and the Aggrieved Employees were entitled to receive all wages
2 owed to them during their employment. Plaintiff and the Aggrieved Employees did not receive
3 payment of all wages, including overtime compensation, minimum wages, meal and rest period
4 premiums.

5 30. Throughout the time period involved in this case, Defendants regularly failed to
6 provide complete or accurate wage statements to Plaintiff and the Aggrieved Employees.
7 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
8 to receive complete and accurate wage statements in accordance with California law, but, in fact,
9 they did not receive complete and accurate wage statements from Defendants. The deficiencies
10 included, *inter alia*, the failure to include the total number of hours worked, the actual gross wages
11 earned, the correct rates of pay, amongst other violations.

12 31. Throughout the time period involved in this case, Defendants regularly failed to
13 keep complete or accurate payroll records for Plaintiff and the Aggrieved Employees. Defendants
14 knew or should have known that Defendants were required to keep complete and accurate payroll
15 records for Plaintiff and the Aggrieved Employees in accordance with California law, but, in fact,
16 did not keep complete and accurate payroll records.

17 32. Throughout the time period involved in this case, Defendants regularly failed to
18 maintain accurate records relating to Plaintiff's and the Aggrieved Employees' work periods,
19 meal periods, total daily hours, hours per pay period, and applicable pay rates.

20 33. Throughout the time period involved in this case, Defendants failed to reimburse
21 Plaintiff and the Aggrieved Employees for all necessary business-related expenses, including but
22 not limited to paint brushes, tools, machines, lights, uniforms, pants and boots. Defendants
23 knew or should have known that Defendants were required to reimburse Plaintiff and the
24 Aggrieved Employees for all necessary business-related expenses and costs, but, in fact, failed to
25 do so in violation of California law.

26 34. Throughout the time period involved in this case, Plaintiff and the Aggrieved
27 Employees were sometimes required by Defendants to report for work and did report for work,
28 but were either not to put to work or were furnished with less than half of their usual or scheduled

1 day's work. On such occasions, Defendants failed to pay Plaintiff and the Aggrieved Employees
2 required reporting time wages for half their usual or scheduled day's work. Defendant also failed
3 to pay Plaintiff and the Aggrieved Employees for two (2) hours at the employee's regular rate of
4 pay on days in which Plaintiff and the Aggrieved Employees were required to report for work a
5 second time in one workday and were furnished less than two (2) hours of work upon the second
6 reporting.

7 35. Throughout the time period involved in this case, Defendants knew or should have
8 known that they had a duty to compensate Plaintiff and the Aggrieved Employees pursuant to
9 California law. Defendants had the financial ability to pay such compensation, but willfully,
10 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the Aggrieved
11 Employees that they paid all wages owed to them, all in order to increase Defendants' profits.

12 36. California Labor Code section 218 states that nothing in Article 1 of the Labor
13 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
14 to him [or her] under this article."

15 **FIRST CAUSE OF ACTION**

16 **(Violation of California Labor Code § 2699, Et Seq.)**

17 **(Against All Defendants)**

18 37. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
19 every allegation set forth above.

20 38. Plaintiff brings his first cause of action as a representative action on behalf of
21 himself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant
22 to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*
23 ("PAGA").

24 39. PAGA specifically provides for a private right of action to recover civil penalties
25 for violations of the Labor Code as follows: "Notwithstanding any other provision of law, any
26 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
27 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
28 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through

1 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
2 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
3 2699(a).

4 40. Plaintiff was employed by Defendants and the Labor Code violations alleged above
5 were committed against him during his time of employment. Plaintiff is therefore, an “aggrieved
6 employee” under PAGA.

7 41. As set forth in detail above, during all times relevant to this Action, Defendants
8 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
9 Codes by:

- 10 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
11 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 12 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
13 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 14 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
15 Employees and failing to pay Plaintiff and the Aggrieved Employees an additional
16 hour of premium pay for meal period violations in violation of Labor Code §§
17 226.7 and 512.
- 18 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to
19 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
20 Employees an additional hour of premium pay for rest period violations in
21 violation of Labor Code §§ 226.7 and 512.
- 22 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end
23 of their employment in violation of Labor Code § 203.
- 24 f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed
25 during employment in violation of Labor Code § 204.
- 26 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
27 itemized wage statements in violation of Labor Code § 226.
- 28 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved

Employees' work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.

i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.

j. Failing to pay reporting time wages to Plaintiff and Aggrieved Employees in violation of Labor Code § 1198 and the applicable IWC Wage Order.

42. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title 8 section 11160, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

43. Plaintiff has exhausted his administrative remedies pursuant to Labor Code § 2699.3. On February 1, 2023, Plaintiff, through his counsel of record, by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than sixty-five (65) days have elapsed since the mailing of Plaintiff's February 1, 2023 notice, and the Labor and Workforce Development Agency has not indicated that it intends to investigate the violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

44. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties

1 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs
2 pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
5 public similarly situated, and as a private attorney general, prays for relief and judgment against
6 Defendants, jointly and severally, as follows:

7 **As to the First Cause of Action**

- 8 1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor
9 Code;
- 10 2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
11 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor
12 Code and/or other applicable statutes; and
- 13 3. For such other relief as the Court deems just and proper.
- 14
15

16 Dated: April 10, 2023

PROTECTION LAW GROUP, LLP

17
18 By: _____


Heather Davis
Amir Nayebdadash
D. Luke Clapp

Attorneys for Plaintiff
SALVADOR CORTEZ

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: April 10, 2023

PROTECTION LAW GROUP, LLP

By: _____


Heather Davis
Amir Nayebdadash
D. Luke Clapp

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SALVADOR CORTEZ