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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAY 23 2023

BY: Kayla Schuebel
Kayla Schuebel, Deputy

FILED

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RUBEN HERNANDEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

NEOVIA LOGISTICS SERVICES, LLC, a
Delaware Limited Liability Company; NEOVIA
LOGISTICS DISTRIBUTION, LP, a Delaware
Limited Partnership; and DOES 1 through 100,

Defendants.

Case No.: CIVSB 2305867

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

- (1) **FAILURE TO PAY ALL MINIMUM
WAGES (LABOR CODE §§ 558,
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) **FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (5) **WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (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**

Plaintiff Ruben Hernandez (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendants Neovia Logistics Services, LLC, a Delaware limited liability company, Neovia Logistics Distribution, LP, a Delaware limited partnership, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 9 (“Wage Order 9”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within San Bernardino County. During the four years immediately preceding the filing of this action and within the statute of limitations

periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, Unfair Competition Law, and Wage Order 9, which sets employment standards for the transportation industry which includes the warehousing of goods or property.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business within the County of San Bernardino and the State of California by operating a logistics warehouse and were doing business in the County of San Bernardino and the State of California.

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

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

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate logistics warehouses across California which provide storage
10 and transportation for their clients. Plaintiff was employed by Defendants as a non-exempt
11 employee at Defendants' Ontario, California location, from May 23, 2016 until approximately
12 December 2020 when Plaintiff commenced a medical leave of absence. On January 25, 2023,
13 Plaintiff formally separated his employment with Defendants.

14 10. During Plaintiff's employment with Defendants, Defendants maintained an
15 unlawful policy/practice that failed to compensate Plaintiff and other non-exempt employees for
16 all minimum wages earned for all hours actually worked including, but not limited to, all hours
17 they were subject to the control of Defendants and/or suffered or permitted to work. Specifically,
18 Defendants required Plaintiff and other similarly situated employees to undergo COVID-19
19 temperature checks prior to clocking in for their shift, but did not record or pay for this time. As
20 a result, Plaintiffs and other non-exempt employees were not compensated at least the statutory
21 minimum wage for all time worked. As a result, Defendants required Plaintiff and other non-
22 exempt employees to perform work while off-the-clock and Defendants failed to compensate
23 Plaintiff and other non-exempt employees for all minimum wages owed.

24 11. Plaintiff routinely worked in excess of 8 hours per workday and/or 40 hours per
25 workweek but did not receive overtime compensation equal to one and a half times his regular
26 rate of pay for all overtime hours worked. Defendants paid Plaintiff and other non-exempt
27 employees non-discretionary incentive pay and/or other forms of pay that are not excludable from
28 an employee's "regular rate" of compensation including, but not limited to, payments denoted in

1 their wage statements as “Shift Prem 60” and “Shift Prem 50” (hereinafter referred to as
2 “Incentive Pay”). Despite paying Plaintiff and other non-exempt employees Incentive Pay,
3 Defendants failed to properly incorporate the value of the Incentive Pay earned by Plaintiff and
4 other non-exempt employees when calculating their respective regular rates of pay, resulting in
5 unpaid overtime wages.

6 12. Throughout Plaintiff’s employment, Defendants also failed to provide Plaintiff
7 and other non-exempt employees with all legally compliant meal periods due to Defendants’
8 unlawful meal period policies/practices which resulted in meal periods which were late, short, or
9 missed. On occasions when Defendants failed to provide Plaintiff and other non-exempt
10 employees with compliant meal periods, Defendants failed to provide Plaintiff and other non-
11 exempt employees with an additional hour of premium pay at the regular rate of pay in each
12 instance in which a violation occurred. Specifically, although Plaintiff and other non-exempt
13 employees received Incentive Pay, Defendants paid meal period premiums at the base rate of pay
14 without any adjustments for the receipt of Incentive Pay, thereby miscalculating and underpaying
15 the meal period premiums paid. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
16 858, 878 (holding that “the term ‘regular rate of compensation’ in section 226.7(c) has the same
17 meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all
18 nondiscretionary payments for work performed by the employee.”). As a result of Defendants’
19 policies/practices, Defendants failed to provide Plaintiff and other non-exempt employees with
20 legally compliant meal period premiums as required by Labor Code § 226.7.

21 13. Defendants also failed to pay Plaintiff and other non-exempt employees all sick
22 pay wages owed to them. Defendants’ policies and practices dictated that sick pay payments be
23 made at an employee’s base rate of pay, as opposed to their regular rate of pay. Because Plaintiff
24 and other non-exempt employees received various forms of non-discretionary Incentive Pay that
25 was required to be incorporated when calculating their respective regular rates of pay, but were
26 not, Plaintiff and other non-exempt employees have not been paid all sick pay wages owed to
27 them.

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1 14. Additionally, Defendants required Plaintiff and other non-exempt employees to
2 purchase and wear protective masks in order to work at their warehouses as part of Defendants'
3 COVID-19 policy. Despite requiring employees to incur these necessary business expenses,
4 Defendants failed to reimburse Plaintiff and other non-exempt employees for the cost of masks.

5 15. As a result of Defendants' failure to pay all minimum wages, overtime wages, sick
6 pay wages, and meal period premium wages owed, Defendants maintained inaccurate payroll
7 records, issued inaccurate wage statements, and failed to pay all final wages owed to Plaintiff and
8 other non-exempt employees upon their respective separations from employment.

9 **CLASS ACTION ALLEGATIONS**

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

12 a. The Minimum Wage Class consists of all of Defendants' current and former non-
13 exempt employees in California who were subject to Defendants' timekeeping
14 policies and/or practices, during the four years immediately preceding
15 immediately preceding the filing of this action through the present.

16 b. The Overtime Class consists of all of Defendants' current and former non-exempt
17 employees in California who worked more than eight (8) hours per day and/or
18 forty hours per workweek and received Incentive Pay during the corresponding
19 time period, during the four years immediately preceding the filing of this action
20 through the present.

21 c. The Meal Period Class consists of all of Defendants' current and former non-
22 exempt employees in California who: (i) worked at least one shift in excess of 5.0
23 hours without their timekeeping records reflecting a meal period of at least 30
24 minutes in duration commencing prior to the conclusion of the fifth hour of work;
25 and/or (ii) worked at least one shift in excess of 10.0 hours without their
26 timekeeping records reflecting a second meal period of at least 30 minutes in
27 duration commencing prior to the conclusion of the tenth hour of work, during the
28 four years immediately preceding the filing of this action through the present.

1 d. The Expense Reimbursement Class consists of all of Defendants' current and
2 former non-exempt employees in California who were not reimbursed for the
3 procurement of protective face masks, during the four years immediately
4 preceding the filing of this action through the present.

5 e. The Wage Statement Class consists of all members of the Overtime Class,
6 Minimum Wage Class, and/or Meal Period Class who received a wage statement
7 during the one year immediately preceding the filing of this complaint through the
8 present.

9 f. The Waiting Time Class consists of: (i) all members of the Minimum Wage Class,
10 Overtime Class, and/or Meal Period Class; and/or (ii) all of Defendants' non-
11 exempt employees who earned Incentive Pay and received sick pay wages during
12 the corresponding time period, who separated their employment from Defendants
13 during the three years immediately preceding the filing of this action through the
14 present.

15 g. The Sick Pay Class consists of all of Defendants' current and former non-exempt
16 employees in California who received sick pay and received Incentive Pay during
17 the corresponding time period, during the four years immediately preceding the
18 filing of this action through the present.

19 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
20 joinder of all members would be unfeasible and not practicable. The membership of the Classes
21 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
22 number greater than 50 individuals. The identity of such membership is readily ascertainable via
23 inspection of Defendants' employment records.

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

28 i. Whether Defendants paid at least the statutory minimum wage for all hours

- 1 worked to members of the Minimum Wage Class;
- 2 ii. Whether Defendants properly paid all overtime wages to members of the Overtime
- 3 Class;
- 4 iii. Whether Defendants provided all legally compliant meal periods to members of
- 5 the Meal Period Class;
- 6 iv. Whether Defendants correctly paid meal period premium payments for non-
- 7 compliant meal periods;
- 8 v. Whether Defendants failed to reimburse members of the Expense Reimbursement
- 9 Class for all necessary business expenses;
- 10 vi. Whether Defendants furnished legally compliant wage statements to members of
- 11 the Wage Statement Class; and
- 12 vii. Whether Defendants' policies and/or practices for the timing and amount of
- 13 payment of final wages to members of the Waiting Time Class at the time of
- 14 separation from employment were unlawful.
- 15 viii. Whether Defendants failed to pay all sick pay at the correct regular rate of pay.

16 19. **Predominance of Common Questions:** Common questions of law and fact

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

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

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

20 timekeeping policies/practices, and meal period policies/practices. As such, common questions

21 predominate over individual questions concerning each individual class member's showing as to

22 their eligibility for recovery or as to the amount of their damages.

23 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because

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

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

26 herein, Plaintiff, like the members of the Classes, was deprived of all minimum wages owed, was

27 deprived off all overtime wages owed, was not provided all lawful meal periods, was not

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reimbursed for all necessary business expenses, did not receive all accurate itemized wage statements, and was not paid all final wages owed at the time of his separation from 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 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.

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 were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interests of the other class members not parties to adjudications, or which would

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 as a Class under § 382 of the Code of Civil
5 Procedure.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY ALL MINIMUM WAGES**
8 **(AGAINST ALL DEFENDANTS)**

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

10 24. 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.

16 25. At all relevant times herein, Defendants failed to conform their pay practices to
17 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
18 for all hours worked including, but not limited to, all hours they were subject to the control of
19 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
20 Order 9.

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

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

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 9.

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 9, 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 9. Wage Order 9, § 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 9, § 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 Class at one and one-half times their regular rate of pay for such hours.

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 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil

1 penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
2 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their non-exempt employees in California,
9 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
10 in accordance with the mandates of the California Labor Code and Wage Order 9, § 10, for the
11 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
12 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
13 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
14 California Labor Code §§ 226.7 and 512.

15 35. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
17 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Code of Civil Procedure §
18 1021.5.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

21 **(AGAINST ALL DEFENDANTS)**

22 36. Plaintiff re-allege and incorporates by reference all previous paragraphs.

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

27 38. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
28 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.”

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

40. 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.

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

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

42. 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 members of the Wage Statement Class with complete and accurate itemized wage statements that included, among other requirements, all hours worked, all overtime and minimum wages earned, gross wages earned, and net wages earned, in violation of Labor Code § 226 *et seq.*

43. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages owed, and deprived Plaintiff and members of the Wage Statement Class of the information necessary to identify the discrepancies in Defendants’ reported data.

44. Defendants’ failures create an entitlement to recovery by Plaintiff and members of 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.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

46. 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 his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment.

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

48. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class 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 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 50. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 et seq., by, amongst other things, failing to pay Plaintiff and the Classes all minimum and overtime
8 wages owed, failing to pay all required meal period premium wages owed, failing to pay all sick
9 pay at the regular rate of pay, failing to reimburse Plaintiff and the Classes for all necessary
10 business expenses, failing to issue accurate itemized wage statements, and failing to pay all final
11 wages at the time of separation from employment.

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

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

21 53. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of this complaint.

23 54. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect his interests and those of the Classes, to obtain restitution on behalf of the members of the
25 Classes, and to enforce important rights affecting the public interest. Plaintiff has thereby
26 incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under
27 Code of Civil Procedure § 1021.5.

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EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

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

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197;
- b. Failing to Plaintiff and other aggrieved employees all overtime compensation earned in violation Labor Code §§ 204, 510, 558, 1194 and 1198;
- c. Failing to provide all meal periods as required by law and failing to pay meal period premiums in all occasions and/or not paying the meal period premium at the correct rate of pay to Plaintiff and other aggrieved employees at these

employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;

- d. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses incurred in violation of Labor Code §§ 2802 and 2804;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- f. Failing to pay Plaintiff and other aggrieved employees sick time pay at their respective regular rates of compensation in violation of Labor Code § 246;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202 and 203;
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

57. On March 2, 2023, 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 of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

58. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former nonexempt employees who worked for Defendants in California at any time between March 2, 2022, and the present.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the

1 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
2 he is entitled to receive under California Labor Code § 2699.

3 **PRAYER**

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

- 6 1. For an order certifying the proposed Classes;
- 7 2. For an order appointing Plaintiff as representative of the Classes;
- 8 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 9 4. Upon the First Cause of Action, for minimum wages, liquidated damages, and
10 penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
- 11 5. Upon the Second Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 13 6. Upon the Third Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 15 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 17 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code
18 §§ 226 *et seq.*;
- 19 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
20 Labor Code §§ 201-203;
- 21 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
22 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
23 practices declared by this Court to be in violation of California Business and Professions Code §
24 17200 *et seq.*;
- 25 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
26 aggrieved employees, and the State of California according to proof pursuant to Labor
27 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
28 violation for each failure to pay each employee and \$200.00 for each subsequent violation or

1 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
2 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
3 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
4 (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor
5 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
6 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
7 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
8 employee per pay period for those violations of the Labor Code for which no civil penalty is
9 specifically provided, based on the violations of Labor Code sections cited in Paragraph 56 (a)-
10 (i) above;

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

13 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
14 §§ 218.5, 1194 *et seq.*, 2802(c), and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

16
17 Dated: May 23, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

18
19 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

20
21 **DEMAND FOR JURY TRIAL**

22
23 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

24 Dated: May 23, 2023

HAINES LAW GROUP, APC

25 By:



Fletcher W. Schmidt
Attorneys for Plaintiff