

Tuvia Korobkin, Esq. # 2680662
tuvia@abramsonlabor.com
Rijenea Appling, Esq. # 346329
rijenea@abramsonlabor.com
ABRAMSON LABOR GROUP
11846 Ventura Boulevard, Suite 100
Studio City, California 91604
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/05/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SCOTT LLEWELLYN, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

BETZ & SONS, INC. a California corporation;
and DOES 1 through 100, Inclusive,

Defendants.

Case No. CGC-23-606077

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

- (1) FAILURE TO PAY OVERTIME AT
REGULAR RATE OF
COMPENSATION (LABOR CODE
§§ 204, 510, 558, 1194, 1198);**
- (2) FAILURE TO PAY MEAL PERIOD
PREMIUMS AT REGULAR RATE
OF COMPENSATION (LABOR
CODE §§ 226.7, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (4) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (5) FAILURE TO TIMELY PAY
WAGES AT TERMINATION
(LABOR CODE §§ 201-203, 227.3);**
- (6) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*);**
- (7) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Scott Llewellyn (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this Class and Representative Action Complaint against Betz & Sons, Inc.,
3 a California corporation; and Does 1 through 100, inclusive (collectively, “Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business and Professions Code section 17200, *et. Seq.*; Labor Code sections 201-204, 226, 226.7,
9 510, 512, 558, 1194 and 1198, 2698 *et seq*; and Industrial Welfare Commission Wage Order No.
10 5 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This class action is
11 brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction
12 over Defendants’ violations of the California Labor Code because the amount in controversy
13 exceeds 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 San Francisco County. Defendants own, maintain offices, transact business, have an
18 agent or agents within San Francisco County, and/or otherwise are found within San Francisco
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
23 applicable to each cause of action herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by California
26 Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1198, 2698 *et seq*; California Business
27 & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 5, which sets
28 employment standards for employees in the public housekeeping industry, including restaurants.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a restaurant, and that they employed Plaintiff and other similarly situated non-exempt
4 employees within San Francisco County and the state of California.

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

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

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

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 Members (as defined in Paragraph 16).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee from
28 approximately August 2021 until approximately July 21, 2022.

1 10. During Plaintiff’s employment with Defendants, Defendants failed to compensate
2 Plaintiff and other non-exempt employees with meal period premiums at their “regular rate of
3 compensation,” as required under Labor Code § 226.7. Specifically, Defendants failed to include
4 the value of free meals that Plaintiff and other non-exempt employees received and/or other
5 remuneration that is not excludable from the regular rate (such forms of remuneration shall be
6 referred to herein collectively as “Incentive Pay”), when calculating the value of meal period
7 premiums. For example, in the pay period of May 22-28, 2022, Plaintiff was paid at a base rate
8 of \$16.32 per hour, and also received free meals that Defendants valued at \$18.00 (as reflected
9 on Plaintiff’s wage statement). Plaintiff was also paid three meal period premiums that pay period,
10 and the meal period premiums were paid at his base rate of pay of \$16.32 and did not incorporate
11 the value of the meals Plaintiff received. The California Supreme Court has held that the terms
12 “regular rate of pay” as used in Labor Code § 510 and “regular rate of compensation” as used in
13 Labor Code § 226.7 are synonymous, and therefore, just as all remuneration must be incorporated
14 into the “regular rate of pay” when calculating overtime pay, it must also be incorporated into the
15 “regular rate of compensation” when calculating meal and rest period premiums under Labor
16 Code § 226.7. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 862 (2021) (holding
17 “that the terms are synonymous: ‘regular rate of compensation’ under section 226.7(c), like
18 ‘regular rate of pay’ under section 510(a), encompasses all nondiscretionary payments, not just
19 hourly wages.”)

20 11. Defendants have also failed to incorporate Incentive Pay when calculating
21 overtime wages. Specifically, Defendants have paid overtime and/or double-time compensation
22 at one-and-one-half times (or two times) employees’ *base* rate of pay, without incorporating
23 Incentive Pay into the “regular rate” of pay. For example, in the same May 22-28, 2022 pay
24 period mentioned above, Plaintiff’s wage statement reflects that he worked overtime and also
25 received free meals that Defendants valued at \$18.00. However, Defendants paid Plaintiff’s
26 overtime wages at \$24.48 per hour, which was 1.5 times Plaintiff’s *base* rate of pay of \$16.32 per
27 hour. Likewise, in the July 10-16, 2022 pay period, Plaintiff’s wage statement reflects that he
28 worked overtime and also received free meals valued at \$21.60, but Defendants paid his overtime

1 compensation at \$25.485, which was 1.5 times his *base* rate of pay of \$16.99 per hour. As a result
2 of Defendants' failure to incorporate Incentive Pay into the regular rate of pay, Plaintiff and other
3 non-exempt employees have been underpaid their overtime and/or double-time compensation.

4 12. Defendants have also failed to provide Plaintiff and other non-exempt employees
5 with all statutorily mandated meal periods due to Defendants' meal period
6 policies/practices. Specifically, the workload imposed on Plaintiff and other non-exempt
7 employees made it impracticable for Plaintiff and other non-exempt employees to take a 30-
8 minute off-duty meal period prior to the end of the fifth hour of work, and/or a second 30-minute
9 meal period on shifts over 10.0 hours. While Defendants paid meal period premiums for some of
10 the meal period violations that incurred, Defendants failed to pay meal period premiums for all
11 meal period violations that incurred as required by Labor Code § 226.7.

12 13. As a result of Defendants' failure to pay all meal period premium and overtime
13 wages, Defendants failed to pay all wages due to Plaintiff and other formerly employed non-
14 exempt employees at the separation of their employment.

15 14. As a further result of Defendants' failure to pay all overtime wages, as well as
16 Defendants' failure to pay meal period premium wages, Defendants have maintained inaccurate
17 payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt
18 employees.

19 15. In addition, Defendants have failed to pay Plaintiff and other non-exempt
20 employees in a timely manner, in violation of Labor Code §§ 201-202. Specifically, Defendants
21 failed to pay Plaintiff all wages due at the separation of his employment. Plaintiff's employment
22 with Defendants ended July 21, 2022, but Defendants failed to pay Plaintiff his earned wages for
23 his last hours worked until July 22, 2022, and did not pay Plaintiff's accrued vacation wages until
24 July 29, 2022, in violation of Labor Code § 227.3.

25 **CLASS ACTION ALLEGATIONS**

26 16. Class Definitions: Plaintiff brings this action on behalf of himself and the
27 following Classes pursuant to Section 382 of the Code of Civil Procedure:
28

1 a. The Overtime Class consists of all of the Defendants' current and former non-
2 exempt employees in California who worked more than 8.0 hours in a workday and/or over
3 40.0 hours in a workweek, and earned Incentive Pay in the same pay period, at any time
4 from four years immediately preceding the filing of this lawsuit to the present.

5 b. The Meal Period Premium Underpayment Class consists of all of the Defendants'
6 current and former non-exempt employees who received a meal period premium and also
7 received Incentive Pay in the same pay period, at any time from four years prior to the
8 filing of this action through the present.

9 c. The Meal Period Class consists of all of the Defendants' current and former non-
10 exempt employees in California who worked at least one shift in excess of 5.0 hours, during
11 the four years immediately preceding the filing of this action through the present.

12 d. The Wage Statement Class consists of all members of the Overtime Class and
13 Meal Period Premium Underpayment Class who received a wage statement from
14 Defendants at any time from one year immediately preceding the filing of this action
15 through the present.

16 e. The Waiting Time Class consists of (i) all members of the Overtime Class, Meal
17 Period Class, and Meal Period Premium Underpayment Class, who are no longer employed
18 by Defendants and who last worked for Defendants at any time from three years prior to
19 the filing of this action through the present; and/or (ii) all employees of Defendants whose
20 final wages (including but not limited to accrued but unused vacation wages) were paid
21 after their last date of employment, and whose employment with Defendants ended at any
22 time from three years prior to the filing of this action to the present.

23 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
24 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
25 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
26 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
27 Defendants' employment records.

28 ///

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

- 5 i. Whether Defendants’ timekeeping and payroll practices violate the
6 applicable Labor Code provisions including, but not limited to, Sections
7 510 and 1194 by requiring overtime work and not paying the Overtime
8 Class for said work according to California’s overtime laws;
- 9 ii. Whether Defendants provided compliant meal periods to Plaintiff and
10 members of the Meal Period Class;
- 11 iii. Whether Defendants paid meal period premiums at the “regular rate of
12 compensation” as required under Labor Code § 226.7 to members of the
13 Meal Period Premium Underpayment Class;
- 14 iv. Whether Defendants furnished legally compliant wage statements to
15 members of the Wage Statement Class pursuant to Labor Code § 226; and
- 16 v. Whether Defendants paid all wages due to members of the Waiting Time
17 Class at the time of separation of employment.

18 **19. Predominance of Common Questions:** Common questions of law and fact
19 predominate over questions that affect only individual members of the Classes. The common
20 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
21 and/or practices applicable to each individual class member, such as Defendants’ overtime and
22 meal period premium calculation, meal period policies, and final wage policies/practices. As such,
23 the common questions predominate over individual questions concerning each individual class
24 member’s showing as to his or her eligibility for recovery or as to the amount of his or her
25 damages.

26 **20. Typicality:** Plaintiff’s claims are typical of the claims of the Classes because
27 Plaintiff was employed by Defendants as a non-exempt employee in California during the
28 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As

alleged herein, Plaintiff, like the members of the Classes, was not properly paid overtime wages, was subject to Defendants' uniform meal period policies/practices and meal period premium calculation practices, was issued inaccurate itemized wage statements, and was deprived of all final wages upon his separation of employment from Defendants.

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 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 unfair advantage, as 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 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 individual class members 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. Further, the claims of the individual members of the Classes are not

sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

24. 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 overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

25. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.

26. As alleged herein, Defendants have caused Plaintiff and Overtime Class members to work overtime hours but have not compensated them at one and one-half times (or two times) their regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE OF**

3 **COMPENSATION**

4 **(AGAINST ALL DEFENDANTS)**

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

6 29. At all relevant times, Defendants have been required to pay meal period premiums
7 at employees' "regular rate of compensation" pursuant to Labor Code § 226.7 when a legally
8 compliant meal period is not provided. "Regular rate of compensation" is synonymous with
9 "regular of pay" as used in Labor Code § 510. Thus, meal period premiums must be calculated
10 in the same manner as the "regular rate of pay" is calculated for overtime purposes, and must
11 incorporate the value of Incentive Pay.

12 30. As alleged herein, Defendants failed to incorporate the value of Incentive Pay
13 when calculating meal period premiums for Plaintiff and members of the Meal Period Premium
14 Underpayment Class, and thus underpaid Plaintiff and members of the Meal Period Premium
15 Underpayment Class for their meal period premium wages due under Labor Code § 226.7.

16 31. As a result of the foregoing, Plaintiff and members of the Meal Period Premium
17 Underpayment Class are entitled to the amount of underpayment of meal period premium wages,
18 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
19 Code §§ 226.7, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of
20 the California Constitution.

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed in their affirmative obligation to provide all their hourly non-exempt employees, including
27 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
28 the mandates of the California Labor Code and Wage Order 5, for the reasons set forth herein.

34. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 5, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. 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 accurate and complete itemized wage statements that included, among other requirements, all wages earned, all meal period premium wages earned, and each hourly rate in effect during the pay period, in violation of Labor Code § 226.

37. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their earned overtime wages, and meal period premium wages, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

38. 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, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE AT TERMINATION

(AGAINST ALL DEFENDANTS)

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

40. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of

1 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
2 to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 41. This cause of action is also brought pursuant to Labor Code § 227.3, which
5 requires employers to pay all accrued but unused vacation wages at an employee's termination.

6 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
8 at their separation from employment, including (but not limited to) unpaid and underpaid overtime
9 and meal period premium wages and accrued but unused vacation wages.

10 43. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
11 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
12 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
13 to the requirements of Labor Code §§ 201-203.

14 44. Defendants' failure to pay all final wages was willful within the meaning of Labor
15 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
16 Time Class their earned wages upon separation from employment results in a continued payment
17 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
18 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
19 attorneys' fees and costs of suit.

20 **SIXTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

22 **(AGAINST ALL DEFENDANTS)**

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

24 46. Defendants have engaged, and continue to engage, in unfair and/or unlawful
25 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to
26 properly pay overtime and meal period premium wages, and failing to issue accurate itemized
27 wage statements and pay all earned wages at separation of employment.

28 ///

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

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

10 49. The acts complained of herein occurred within four years immediately preceding
11 the filing of this action.

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

17 **SEVENTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.
21 Defendants have committed several Labor Code violations against Plaintiff and other aggrieved
22 employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*
23 Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative
24 action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved
25 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
26 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
27 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
28 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 \$100.00 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 of Labor Code § 226 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 all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198; and
- d. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203 and 227.3.

52. On or about April 26, 2023 and July 3, 2023, Plaintiff notified Defendant Betz & Sons, Inc., 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 the violations of the California Labor Code identified above. Now that sixty-five days have passed from Plaintiff's initially notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act.

53. 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 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, et seq.;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, et seq.;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 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 of Labor Code § 226 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, pursuant to Labor Code § 2699(f);

11. Prejudgment interest on all due and unpaid wages and other damages pursuant to California Labor Code §§ 218.6, 1194(a), Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, 2699(g), and Code of Civil Procedure § 1021.5, and all other relevant statutes; and

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

Date: July 3, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By:


Tuvia Korobkin
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: July 3, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By:


Tuvia Korobkin
Attorney for Plaintiff