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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF RIVERSIDE**

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| MICHAEL FLORES, as an individual and on behalf of all others similarly situated,<br><br>Plaintiff,<br><br>vs.<br><br>WE CARE PLUMBING, HEATING & AIR, LLC; RUSSELL COCHRAN, an individual; and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No. CVRI2303843<br><br>**FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:**<br><br>**(1) MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 226.2, 1182.12, 1194, 1194.2, AND 1197);**<br>**(2) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 1194, 1198);**<br>**(3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 558);**<br>**(4) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.2, 226.7, 516, 558);**<br>**(5) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**<br>**(6) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226 *et seq.*);**<br>**(7) FAILURE TO REIMBURSE ALL NECESSARY BUSINESS** |

EXPENDITURES (LABOR CODE §§ 2802, 2804);

(8) UNFAIR COMPETITION (BUS & PROF CODE § 17200, *et seq.*); and

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

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Michael Flores ("Plaintiff") hereby brings this First Amended Class and Representative Action Complaint ("Complaint") against Defendant We Care Plumbing, Heating & Air, LLC ("We Care"), a California corporation; Russell Cochran ("Cochran"), an individual; and DOES 1 through 50, inclusive (collectively, "Defendants"), and on information and belief alleges as follows:

## JURISDICTION

1. Plaintiff hereby brings this Complaint for recovery of unpaid wages and penalties under California Business and Professions Code § 17200 et. seq., Labor Code §§ 201-204, 226 *et seq*., 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq*.; and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"), in addition to seeking declaratory relief and restitution.

## 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 Riverside County. Defendants own, maintain offices, transact business, have an agent or agents within Riverside County, and/or otherwise are found within Riverside County, 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. 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 to him by California Business and Professions Code § 17200 *et. seq*., Labor Code §§ 201-204, 226 *et seq*., 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, and Wage Order 4 which sets forth the employment standards for "Professional, Technical, Clerical, Mechanical and Similar Occupations."

4. Plaintiff is informed and believes, and based thereon alleges, that during the time period relevant to this action, Defendants did (and continue to do) business by servicing residential and commercial plumbing, heating, and air conditioning systems.

5. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and were the employers of Plaintiff and of the members of the Classes (as defined in Paragraph 21).

6. Plaintiff does not know the true names, capacities, relationships, and/or the extent of participation of Defendants DOES 1 through 50, inclusive, in the conduct alleged in this Complaint. For that reason, Defendants DOES 1 through 50, inclusive, are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when their true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named Respondent is and was responsible in some way for the alleged wage-and-hour violations and other wrongful conduct that subjected Plaintiff and the Classes, as defined below, to the illegal employment practices, wrongs and injuries complained of herein. All references in this Complaint to "Defendants" shall be deemed to include Cochran and all DOE Defendants.

**ALTER EGO, AGENCY, AND JOINT EMPLOYER**

7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Cochran owned and/or controlled the business operated by We Care. Furthermore, Cochran exercised control over the labor practices of each and every employee (including Plaintiff) of each and every one of their said interests, and caused the violations at issue in this Complaint, thereby creating individual liability under Labor Code § 558.1.

8. Plaintiff is informed and believes, and based thereon alleges, that there is such a unity of interest and ownership between We Care, Cochran, and DOES 1-50 that the individuality and separateness of Defendants have ceased to exist.

9. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, We Care, Cochran, and DOES 1-50 are in reality one and the same, including, but not limited to because:

a. We Care is or was completely dominated and controlled by Cochran and DOES 1-50, who personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden and currently hide behind We Care to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

b. Cochran and DOES 1-50 have acted on behalf of We Care, who violate, or cause to be violated, the provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code §§ 203, 226, 226.7, 1194, or 2802.

c. Cochran and DOES 1-50 derive actual and significant monetary benefits by and through We Care as the funding source for their own personal expenditures.

d. Plaintiff is informed and believes that Cochran, We Care, and DOES 1-50, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

e. Plaintiff is informed and believes that We Care does not or did not comply with all requisite corporate formalities to maintain a legal and separate corporate existence.

f. Plaintiff is informed and believes, and based thereon alleges, that the business affairs of Cochran, We Care, and DOES 1-50 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion.

g. We Care is, and at all times relevant hereto was, used by Cochran and DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of Cochran and DOES 1-50. The recognition of the separate existence of We Care, and/or Cochran, would not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiffs for violations of the Labor Code. The corporate existence of Cochran, We Care, and

DOES 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

10. Accordingly, We Care constitutes the alter egos of Cochran and DOES 1-50, and the fiction of their separate corporate existence must be disregarded.

11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges, that We Care, Cochran, and DOES 1-50 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of We Care, Cochran, and DOES 1-50. Plaintiff performed services for each and every one of the Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff and the Classes (as defined in Paragraph 21) as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

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

## GENERAL FACTUAL ALLEGATIONS

13. Defendants offer a wide range of services for plumbing, heating, and air conditioning systems throughout Los Angeles, Orange, and Riverside Counties. Defendants employed Plaintiff in the non-exempt job position of "Installer" (or similarly titled position). Plaintiff was initially hired by Defendants in approximately July 7, 2021, and worked for Defendants until approximately February, 2023.

14. At all times relevant herein, Defendants compensated Plaintiff and other non-exempt employees on a commission and/or piece-rate "bonuses," whereby Defendants were paid based on the number of units installed. Despite the fact that Plaintiff had his hours worked recorded by a dispatcher who clocked him in and out at the beginning and end of his workday,

pursuant to Defendants' policy the wages earned for these hours are treated as an advance against Plaintiff's commission and/or piece-rate earnings, as only those commission and/or piece-rate earnings in excess of the "hourly wages" are paid out as commission and/or piece-rate earnings. Plaintiff and other non-exempt employees were pressured and encouraged to be highly productive and were told not to leave until all jobs were finished, even completing work after clocking out. As a result, Plaintiff and other non-exempt employees infrequently have commission and/or piece-rate earnings that do not exceed their hourly wages. Plaintiff and other non-exempt employees never clocked in or out by themselves, and never filled out their own timesheets.

15. Because Defendants' pay system is simply a subterfuge for a commission and/or piece-rate compensation system, Plaintiff and other non-exempt employees are not separately compensated for time spent working on tasks which are not compensated on a piece-rate/commission basis, including travel time, hours spent cleaning and maintaining tools, performing administrative tasks, attending mandatory meetings, and other work not related to the commission and/or piece-rate earnings (i.e., "non-productive" time worked). As a result, Defendants failed to pay Plaintiff at least the minimum wage for all hours actually worked and failed to credit Plaintiff with all overtime hours actually worked.

16. While working on a commission and/or piece rate basis, Plaintiff worked shifts in excess of 3.5 hours. However, Defendants failed to authorize and permit Plaintiff from taking a rest period for every 4-hour period worked, or major fraction thereof, because Defendants' commission and/or piece-rate compensation plan fails to separately compensate Plaintiff for required rest periods. As a result, Defendants failed to compensate Plaintiff for rest periods as required by Wage Order 4, §12(A) and Labor Code section 226.2, nor have Defendants compensated Plaintiff pursuant to Labor Code section 226.7 for their failure to provide "paid" rest periods.

17. Defendants also failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods due to Defendants' meal period policies/practices, which failed to provide a timely first meal period (i.e., commencing before the end of the fifth hour of work), as well as a second meal period for shifts over 10.0 hours. Because Defendants' pay system is simply a subterfuge for a commission and/or piece-rate compensation system, Plaintiff and other

non-exempt employees were encouraged to clock out for lunch without actually taking a lunch break and to clock out for the end of the day but to continue to work until all jobs were completed, resulting in many hours of off-the-clock work, and falsely reported meal periods that were never provided. In addition, Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant second meal period when they work shifts in excess of 10.0 hours.

18. As a result of Defendants' commission and/or piece-rate compensation system, Defendants failed to properly calculate Plaintiff's respective regular rates of pay for purposes of calculating overtime compensation. Instead, Defendants calculated the regular rate of pay entirely by dividing base salary ($17) by the non-overtime hours worked instead of using, for the numerator, the sum of base salary and non-discretionary bonuses (i.e. commission pay). As a result, Defendants failed to properly compensate Plaintiff at one and a half times his respective regular rate of pay for hours worked in excess of 8.0 hours per day and/or 40.0 hours per week and was therefore deprived of all overtime compensation.

19. At all times relevant herein, Defendants failed to reimburse Plaintiff for all reasonable and necessary work expenditures, including, but not limited to, personal cellular phone expenses needed to phone dispatchers who, among other things, clocked Plaintiff in and out of his shifts. Plaintiff also paid for his own tools and for repairs to tools when necessary. Therefore, Plaintiff and other non-exempt employees are entitled to reimbursement pursuant to Labor Code § 2802.

20. As a result of Defendants' failure to pay all overtime wages, minimum wages, and meal and rest period premiums, Defendants maintained inaccurate payroll records, issued inaccurate wage statements to Plaintiff, and failed to pay Plaintiff all wages due upon their respective separation of employment with Defendants.

## CLASS ACTION ALLEGATIONS

21. Class Definitions: Plaintiff brings this Complaint on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were paid on a commission and/or piece rate basis (or "hourly plus bonus") during the four years immediately preceding the filing of this Complaint through the present.

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

c. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who were paid on a commission and/or piece rate basis (or "hourly plus bonus") and who worked over 8.0 hours in a day and/or 40.0 hours in a week, during the four years immediately preceding the filing of this Complaint through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who were paid on a commission and/or piece rate basis (or "hourly plus bonus"), and who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this Complaint through the present.

e. The Waiting Time Class consists of all formerly employed members of the Overtime Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who separated their employment from Defendants during the four years immediately preceding the filing of this Complaint through the present.

f. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who worked for Defendants in California during the four years immediately preceding the filing of this Complaint through the present.

g. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees who were not reimbursed for business expenses in California during the four years immediately preceding the filing of this Complaint through the present.

22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes

and subclasses are unknown to Plaintiff, at this time; however, it is estimated that the number is in excess of fifty (50) individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 226.2, 1182.12, 1194, 1194.2 and 1197 by failing to pay all members of the Minimum Wage Class at least the minimum wage for all hours worked;

ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and 516;

v. Whether Defendants' polices and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful;

vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226 and 226.2;

vii. Whether Defendants' reimbursement policies, and failure to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties comply with Labor Code § 2802.

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform Flat Rate or Commission Plans and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as non-exempt employees in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum and overtime wages, was not authorized and permitted all required meal and rest periods, was not reimbursed for all necessary business expenditures, was not paid all final wages owed to him upon separation of employment with Defendants, and did not receive complete and accurate wage statements.

26. **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.

**27.** **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

**FIRST CAUSE OF ACTION**

**MINIMUM WAGE VIOLATIONS**

**(AGAINST ALL DEFENDANTS)**

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

29. Wage Order 4, § 4 and Labor Code §§ 226.2, 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage Order 4.

30. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform commission compensation structure for Plaintiff and members of the Minimum Wage Class, which resulted in these individuals only being paid on Defendants' commission-based system, as opposed to being paid for all hours actually worked. Accordingly, Plaintiff and Minimum Wage Class members were not paid at least the legal minimum wage for all hours actually worked.

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

32. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they 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 4.

**33.** Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq*., and 1198; and Code of Civil Procedure § 1021.5.

34. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to the Wage Order 4, § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages

and/or penalties pursuant to California Labor Code § 558(a).

## <u>SECOND CAUSE OF ACTION</u>

## FAILURE TO PAY ALL OVERTIME WAGES

## (AGAINST ALL DEFENDANTS)

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

36. 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.

37. 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 4. Wage Order 4, § 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 4, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Pay Class at one and one half times their regular rate of pay for such hours.

38. Defendants' policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 4.

39. The foregoing policies/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 penalties, attorneys' fees, and costs of suit according to Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

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**<u>THIRD CAUSE OF ACTION</u>**

**MEAL PERIOD VIOLATIONS**

**(AGAINST ALL DEFENDANTS)**

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

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally-compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

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

**<u>FOURTH CAUSE OF ACTION</u>**

**REST PERIOD VIOLATIONS**

**(AGAINST ALL DEFENDANTS)**

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

44. Wage Order 4, § 12 and Labor Code §§ 226.2, 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

45. As alleged herein, Defendants failed to separately compensate Plaintiff and members of the Rest Period Class for each rest and recovery period to which they were entitled while working pursuant to the Commission Compensation Plans.

46. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.2, 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

**FIFTH CAUSE OF ACTION**

**WAITING TIME PENALTIES**

**(AGAINST ALL DEFENDANTS)**

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

48. 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 termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee’s wages become due and payable not later than 72 hours upon said employee’s last date of employment.

49. Plaintiff is informed and believes, and based thereon allege, that Defendants failed to timey 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, overtime wages, and meal and rest period premiums. Defendants’ failure to pay all final wages was willful within the meaning of Labor Code § 203.

50. Defendants’ willful failure to timely pay Plaintiff his respective 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.

**SIXTH CAUSE OF ACTION**

**WAGE STATEMENT VIOLATIONS**

**(AGAINST ALL DEFENDANTS)**

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

52. Plaintiff is informed and believes, and bases thereon allege, 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 wage statements with

respect to their respective actual regular hours worked, overtime hours worked, total gross wages earned, and total net wages earned, in violation of Labor Code §§ 226 and 226.2.

53. Defendants' failures in furnishing Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failure led to, among other things, the non-payment of all earned overtime, and deprived Plaintiff of the information necessary to identify the discrepancies in Defendants' reported data.

54. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq*., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq*.

## SEVENTH CAUSE OF ACTION

## FAILURE TO REIMBURSE ALL NECESSARY BUSINESS EXPENDITURES

## (AGAINST ALL DEFENDANTS)

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

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

57. Furthermore, at all relevant times herein, Defendants were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

58. Due to Defendants' unlawful policy and/or practice of requiring employees to use their own tools and personal cellular phones for work purposes, and failing to pay reimbursements to Plaintiff and members of the Employee Expense Class, Defendants have violated Labor Code § 2802.

59. As a proximate result of Defendants' policies and/or practices in violation of Labor

Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages in sums, which will be shown according to proof.

60. Plaintiff and members of the Employee Expense Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

61. 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 and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

## EIGHTH CAUSE OF ACTION

## UNFAIR COMPETITION

## (AGAINST ALL DEFENDANTS)

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

63. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of Business and Professions Code § 17200 *et seq*. by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages for all overtime hours worked; (b) failing to pay Plaintiff and members of the Minimum Wage Class at least at the minimum wage for all hours worked; (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, or failing to pay them meal period premium payments in lieu thereof; (d) failing to authorize and permit all required duty-free rest periods to Plaintiff and members of the Rest Period Class, and/or failing to pay them rest period premiums payments in lieu thereof; (e) failing to timely pay all wages owed upon separation to Plaintiff and members of the Waiting Time Class; (f) failing to furnish Plaintiff and members of the Wage Statement Class accurate and itemized wage statements; and (g) failing to reimburse all necessary business expenditures to Plaintiff and members of the Employee Expense Class.

64. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and

attempting to do so in honest compliance with applicable wage and hour laws.

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

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

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

**NINTH CAUSE OF ACTION**

**PRIVATE ATTORNEYS GENERAL ACT**

**(AGAINST ALL DEFENDANTS)**

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

69. 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 $50 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 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 minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;

b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime and/or double-time compensation in violation of Labor Code §§ 204, 210, 510, 558, 1194, and 1198;

c. Failing to provide all legally required meal periods, and failing to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

f. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

70. On April 20, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 69 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

71. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between April 20, 2022, and the present.

72. 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 receive 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, 226.2, 510, 558, 1194, and 1198;

5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

6. Upon the Third Cause of Action, for compensatory, consequential, general, and

special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.2, 226.7 and 516;

8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;

9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.* and 226.2;

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

11. Upon the Eighth Cause of Action, for restitution to Plaintiff 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*.;

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, 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 $50 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 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 Labor Code violations identified in Paragraph 56 (a)-(h);

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

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, 2802(c), and 2699(g), and Code of Civil Procedure § 1021.5; and

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

Respectfully submitted,

Dated: October 30, 2023

LOYR, APC

By: ______________________

Young W. Ryu
Zachariah E. Moura
Kee Seok Mah
Attorneys for Plaintiff

HAINES LAW GROUP, APC

By: ______________________

Paul K. Haines
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

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

Dated: October 30, 2023

LOYR, APC

By: ______________________

Young W. Ryu
Zachariah E. Moura
Kee Seok Mah
Attorneys for Plaintiff

HAINES LAW GROUP, APC

By: ______________________

Paul K. Haines
Attorneys for Plaintiff

## PROOF OF SERVICE

I am over 18 years old and not a party to this action. My business address is 1055 West 7th Street, Suite 2290, Los Angeles, California 90017.

On November 3, 2023, I served the following documents in a sealed envelope on the interested party as follows:

1. **FIRST AMENDED CLASS AND REPREENTATIVE ACTION COMPLAINT**

*Attorneys for Defendant*

Arthur Cunningham, Esq.
arthur.cunningham@jacksonlewis.com
Semarnpreet Kaur, Esq.
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☑ **BY ELECTRONIC SERVICE:**

My electronic service address is kee.mah@loywr.com. Per the parties' agreement, through their respective counsel, to accept electronic service and pursuant to California Code of Civil Procedure section 1010.6, I served the foregoing document on the interested party at the electronic service addresses (e-mail addresses) listed above and did not receive Notice of Failure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 3, 2023, in Los Angeles, California.

Kee Seok Mah

LOYR, APC
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