

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Aden M. Khachadoorian (SBN 346908)
akhachadoorian@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ARNULDO AVELIO ARGUETA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

EXCEL LANDSCAPE, INC., a California
corporation; and DOES 1 through 100,

Defendants.

CASE NO. CVRI2302720

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (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**

1 Plaintiff Arnuldo Avelio Argueta (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Excel Landscape, Inc., a California corporation, and DOES 1
4 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. Seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194,
9 1194.2, 1197, 1198, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order 5 (“Wage
10 Order 5”), in addition to seeking injunctive relief, declaratory relief, and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy 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 Riverside County. Defendants own, maintain offices, transact business, have an agent
18 or agents within Riverside County, and/or otherwise are found within Riverside County, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
22 eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident.
23 Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff
24 was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of
25 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
26 been deprived of the rights guaranteed by California Business and Professions Code § 17200 *et.*
27 *seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2698 *et seq.*, and Wage Order 5, which sets employment standards for establishments contracting

1 for the development, maintenance or cleaning of grounds.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the
3 applicable statute of limitations for each cause of action pled herein and continuing to the present,
4 Defendants engage in and continue to engage in providing landscaping services, and employed
5 Plaintiff and other, similarly-situated non-exempt employees within Riverside County, and the
6 State of California and, therefore, were (and are) doing business in Riverside County and the State
7 of California.

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

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

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

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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants specialize in residential, commercial, and municipal landscape
4 maintenance and serve locations throughout Southern California. Plaintiff began working for
5 Defendants as a non-exempt employee in approximately January 2021, and worked until his
6 termination in approximately January 2023.

7 10. Throughout Plaintiff's employment with Defendants, Defendants' timekeeping
8 policies and/or practices resulted in Plaintiff and other non-exempt employees not being
9 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. For
10 a portion of relevant time period, Defendants required Plaintiff and other non-exempt employees
11 to clock out and in through an electronic cellphone application which records employees' hours
12 worked to the minute. However, upon information and belief, the company-provided phone did
13 not always function which in turn resulted in Plaintiff and other non-exempt employees needing
14 to report their hours worked to their supervisors. Upon information and belief, Defendants'
15 supervisors did not always accurately record the hours worked when Plaintiff or other non-exempt
16 employees were not able to clock in or out on their phone applications, resulting in a failure to
17 compensate for all hours actually worked. Furthermore, Plaintiff was regularly required to
18 commence working prior to his scheduled start time of 6:30 a.m., however, Defendants did not
19 allow Plaintiff to clock in before his scheduled start time, resulting in a further failure to
20 compensate for all hours worked. As a result, Plaintiff and other non-exempt employees were not
21 compensated for all earned minimum and overtime wages.

22 11. Defendants failed to provide Plaintiff and other non-exempt employees with all
23 legally compliant meal periods due to Defendants' meal period policies/practices, which have
24 frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
25 and missed meal periods. Specifically, Plaintiff's and other non-exempt employees' meal periods
26 frequently commenced after the completion of five hours of work. Although Plaintiff's scheduled
27 shift started at 6:30 a.m. or before, Plaintiff was often not provided with a meal period until after
28 11:30 a.m. Additionally, Defendants' meal period policies/practices do not provide for a second

meal period for shifts in excess of 10.0 hours, nor were Plaintiff and other non-exempt employees provided with a second meal period for shifts over 10.0 hours. Moreover, Defendants do not keep accurate records of Plaintiff's and other non-exempt employees' hours worked, including time records showing when employees take their meal periods. During at least a portion of the relevant time period, Defendants did not require Plaintiff and other non-exempt employees to record their meal periods. Instead, upon information and belief, Defendants automatically deducted 30 minutes from the total hours worked for each shift worked regardless of whether the employee took a full 30-minute compliant meal period. On those occasions when Plaintiff was not provided with all legally compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal period was not provided to their non-exempt employees.

12. Plaintiff and other non-exempt employees were not authorized and permitted to take all required rest periods due to Defendants' unlawful rest period policies/practices, which failed to authorize and permit a net 10-minute rest period for every four hours worked, or major fraction thereof. Plaintiff and other non-exempt employees were not able to take their legally compliant rest breaks due to work demands imposed by Defendants. Additionally, although Plaintiff and other non-exempt employees occasionally worked shifts in excess of 10.0 hours, Plaintiff and other non-exempt employees were not authorized and permitted a third rest period during shifts in excess of 10.0 hours. On those occasions when Plaintiff was not authorized and permitted to take all legally compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted to their non-exempt employees.

13. As a result of Defendants' failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees. As a further result of Defendants' failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Defendants failed to timely pay all final wages to Plaintiff and other former employees upon their separation of employment from Defendants. Additionally, Defendants failed to pay Plaintiff his accrued sick and vacation time at the separation of Plaintiff's employment with Defendants.

CLASS ACTION ALLEGATIONS

14. **Class Definitions:** Plaintiff brings this action 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 subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of this action through the present.
- d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of all Defendants' current and former non-exempt employees in California who received a wage statement, during the one year immediately preceding the filing of this action through the present.

f. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class, and/or all former non-exempt employees who were paid sick and/or vacation pay, during the three years immediately preceding the filing of this action through the present.

15. **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 members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

16. **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 employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants properly paid all overtime wages to members of the Overtime Class;
- ii. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;
- 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 §§ 226.7 and 516;
- v. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods;
- vi. Whether Defendants furnished legally compliant wage statements to members of

the Wage Statement Class pursuant to Labor Code § 226; and

- vii. Whether Defendants' policies 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.

17. **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, including but not limited to Defendants' timekeeping policies/practices, and meal 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.

18. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee 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 not paid all minimum and overtime wages owed due to Defendants' timekeeping policies/practices, was not provided all required meal periods, was not authorized and permitted all rest periods, did not receive premium pay for non-compliant meal and rest periods, was not paid all final wages upon separation of employment, and was not provided with accurate, compliant, itemized wage statements.

19. **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.

20. **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

1 exploitation by employers who have the responsibility to follow the laws and who may seek to
2 take advantage of superior economic and bargaining power in setting onerous terms and
3 conditions of employment. The nature of this action and the format of laws available to Plaintiff
4 and members of the Classes make the class action format a particularly efficient and appropriate
5 procedure to redress the violations alleged herein. If each employee were required to file an
6 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
7 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
8 their vastly superior financial and legal resources. Moreover, requiring each member of the
9 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
10 employees who would be disinclined to file an action against their former and/or current employer
11 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
12 employment. Further, the prosecution of separate actions by the individual class members, even
13 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
14 with respect to the individual class members against Defendants herein; and which would
15 establish potentially incompatible standards of conduct for Defendants; and/or legal
16 determinations with respect to individual class members which would, as a practical matter, be
17 dispositive of the interest of the other class members not parties to adjudications or which would
18 substantially impair or impede the ability of the class members to protect their interests. Further,
19 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
20 individual prosecution considering all of the concomitant costs and expenses attending thereto.
21 As such, the Classes identified in Paragraph 14 are maintainable as classes under § 382 of the
22 Code of Civil Procedure.

23 **FIRST CAUSE OF ACTION**

24 **MINIMUM WAGE VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

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

27 22. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
28 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.

1 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
2 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
3 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
4 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its
5 pay practices to the requirements of the law by failing to pay Plaintiff and members of the
6 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
7 subject to the control of Defendants and/or suffered or permitted to work under the California
8 Labor Code and Wage Order 5.

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

14 24. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
15 members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 18(A) and
16 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
17 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;
18 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages
19 and/or penalties pursuant to California Labor Code § 558(a).

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGES**

22 **(AGAINST ALL DEFENDANTS)**

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

24 26. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
25 1198, which provide that non-exempt employees are entitled to all overtime wages and
26 compensation for all overtime hours worked and provide a private right of action for the failure
27 to pay all overtime compensation for overtime work performed.

28 27. At all times relevant herein, Defendants were required to properly compensate

1 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
2 hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3
3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
4 rate of pay” for all overtime hours work. Defendants caused Plaintiff and members of the
5 Overtime Class to work overtime hours but failed to credit these employees with all overtime
6 hours actually worked.

7 28. The foregoing policies and practices are unlawful and create entitlement to
8 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of
9 overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and
10 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198;
11 Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

12 **THIRD CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

16 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed in their affirmative obligation to provide all of their non-exempt employees in California,
18 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
19 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
20 Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members
21 of the Meal Period Class at their respective regular rates of compensation, in accordance with
22 California Labor Code §§ 204, 210, 226.7, and 512.

23 31. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations including interest thereon, statutory penalties, civil penalties, and costs of suit,
25 pursuant to Labor Code §§ 226.7, 512, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 33. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
6 the right of employees to be provided with a rest period of at least ten (10) minutes for each four
7 (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and
8 permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as
9 alleged herein, Defendants did not pay these individuals an additional hour of pay at their
10 respective regular rate for the rest periods that they failed to authorize and permit them to take, as
11 required by Labor Code § 226.7.

12 34. Defendants' policies and practices described herein are unlawful and create an
13 entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the
14 unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
15 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
16 516, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

17 **FIFTH CAUSE OF ACTION**

18 **WAGE STATEMENT VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

21 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
23 and members of the Wage Statement Class with accurate and complete, itemized wage statements
24 that included, among other requirements, all hours worked, total gross wages earned, all rates of
25 pay and corresponding number of hours worked, total net wages earned, and the correct name and
26 address of the legal entity that is the employer in violation of Labor Code § 226 *et seq.*

27 37. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
28 with accurate and complete, itemized wage statements resulted in actual injury, as said failures

1 led to, among other things, the non-payment of minimum and overtime wages and meal and rest
2 period premium wages owed and deprived them of the information necessary to identify the
3 discrepancies in Defendants' reported data.

4 38. Defendants' failures create an entitlement to recovery by Plaintiff and members of
5 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
6 Code § 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and
7 costs of suit according to California Labor Code § 226 *et seq.*

8 **SIXTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

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

12 40. This cause of action is brought pursuant to Cal. Labor Code §§ 201-203, which
13 require an employer to pay all wages immediately at the time of separation of employment in the
14 event the employer discharges the employee or the employee provides at least 72 hours of notice
15 of their intent to quit. In the event the employee provides less than 72 hours of notice of their
16 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
17 employee's last date of employment.

18 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
20 at their separation from employment, including unpaid minimum and overtime wages as well as
21 unpaid meal and rest period premium wages and all accrued sick and vacation pay.

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

26 43. Defendants' failure to pay all final wages was willful within the meaning of Cal.
27 Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the
28 Waiting Time Class their earned wages upon separation from employment results in a continued

1 payment of daily wages up to thirty days from the time the wages were due.

2 44. Plaintiff and members of the Waiting Time Class are entitled to compensation
3 pursuant to Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

4 **SEVENTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

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

8 46. Defendants have engaged and continue to engage in unfair and/or unlawful
9 business practices in California in violation of California Business and Professions Code § 17200
10 *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages
11 owed; (b) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages;
12 (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to
13 which they are entitled, and failing to pay them meal period premium payments; (d) failing to
14 authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they
15 are entitled, and failing to pay them rest period premium payments; (e) failing to issue accurate
16 and itemized wage statements to the Wage Statement Class; and (f) failing to timely pay all final
17 wages to the Waiting Time Penalty Class.

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

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

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

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

6 **EIGHTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

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

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

- 26 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
27 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
28 1182.12, 1194, 1194.2, and 1197 1198;

- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure 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 failure 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.

53. On May 24, 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 52 (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.

54. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

55. 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 payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 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 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
10. Upon the Seventh 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.*;

11. Upon the Eighth 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 \$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 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 52 (a)-(h);

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

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

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

Dated: July 24, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

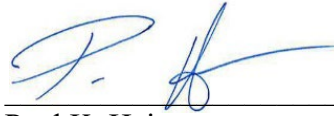
DEMAND FOR JURY TRIAL

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

Dated: July 24, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

[illegible]

On July 24, 2023, I served the foregoing document(s) described as:

on the interested party(ies) in this action as follows:

Executed on July 24, 2023, at El Segundo, California.

Aaron Clark