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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RAFAEL PEREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KYOCERA SGS PRECISION TOOLS, INC.,
an Ohio corporation; and DOES 1 through 100,

Defendants.

Case No.: 30-2022-01299232-CU-OE-CXC

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

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (8) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *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 Rafael Perez (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this Class and Representative Action Complaint against Defendants Kyocera SGS Precision Tools, Inc., an Ohio corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, Business and Professions Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within Orange County. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-

1 exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
2 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
3 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
4 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.*
5 ("Unfair Competition Law"), and Wage Order 1, which sets employment standards for the
6 manufacturing industry, including metal products and machinery.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing this action and continuing to the present, Defendants did (and continue
9 to do) business within the County of Orange and the State of California by operating a metal tool
10 manufacturing company and therefore, were (and are) doing business in the County of Orange
11 and the State of California.

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

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

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

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate a manufacturing company that produces metal parts and tools
10 for several industries, including the dental and airline industries. Plaintiff was employed by
11 Defendants as a non-exempt “Machine Operator” from approximately 1996 to July 2021 in Costa
12 Mesa, California. Plaintiff’s primary job duties consisted of operating a “Cincinnati Machine,”
13 which consists of heavy machinery that cuts metal material used to produce mechanical parts and
14 tools.

15 10. During Plaintiff’s employment with Defendants, Defendants failed to compensate
16 Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid
17 minimum wages and additional unpaid overtime wages. Specifically, Plaintiff clocked in to work
18 with a punch card timekeeping system that recorded his clock-in and clock-out times to the
19 minute. However, during the relevant time period, Defendants’ timekeeping system rounded
20 and/or time-shaved Plaintiff’s hours, which resulted in Plaintiff not being compensated for all
21 hours actually worked. Defendants regularly, systematically, and impermissibly rounded and/or
22 shaved the time worked by Plaintiff and other non-exempt employees in Defendants’ favor. This
23 time shaving/rounding practice utilized by Defendants was not-even handed over time and would
24 round and shave in Defendants’ favor such that Plaintiff was routinely underpaid for his time
25 worked. Due to Defendants’ timekeeping policies and practices that fail to compensate for all
26 hours worked, Plaintiff and other non-exempt employees were deprived of all required minimum
27 wages. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 654 (“[I]f an employer,
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as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for “all the time” worked.”). Further, on occasions when Plaintiff worked over eight hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also deprived him of all overtime wages owed. As such, Plaintiff and other non-exempt employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

11. Defendants also failed to pay Plaintiff and other non-exempt employees for time spent undergoing COVID-19 temperature checks prior to clocking in. During the relevant time period, Defendants mandated that Plaintiff and other nonexempt employees undergo temperature checks by standing in front of a machine that scanned their body temperature. Plaintiff and other nonexempt employees clocked in for their shifts after they underwent the temperature scan. As a result, Plaintiff and other non-exempt employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

12. Defendants also failed to provide Plaintiff and other non-exempt employees with all legally-compliant meal periods due to Defendants’ unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute first meal periods commencing before the end of the fifth hour of work and a second duty-free, 30-minute meal period when they worked shifts in excess of 10.0 hours. Specifically, Plaintiff operated a “Cincinnati Machine,” that cannot be turned off or left unattended once it initiated a project, which could last up to approximately 3 hours. As a result, Plaintiff and other non-exempt employees often clocked out for their meal periods to reflect legally complaint meal periods before the fifth hour of work; however, they continued their work duties while clocked out. Moreover, Plaintiff’s supervisor occasionally required Plaintiff to work on special production orders that cut into his meal and rest periods. As a result of Defendants’ policies and practices, Plaintiff and other non-exempt employees frequently took untimely meal periods or missed their meal periods altogether.

13. On occasions when Plaintiff and other non-exempt employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Plaintiff and

1 other non-exempt employees an additional hour of premium pay at their respective regular rates
2 of pay for each workday in which a meal period violation occurred, as required by Labor Code §
3 226.7. Specifically, Defendants paid Plaintiff and other non-exempt employees non-discretionary
4 incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate"
5 of compensation including but not limited to commissions, bonuses, and payments denoted as
6 "BONUS" (hereinafter referred to as "Incentive Pay"). As a result of paying Plaintiff Incentive
7 Pay, Defendants failed to properly calculate the regular rate of pay, resulting in unpaid and/or
8 underpaid meal period premiums. Based on the foregoing, Plaintiff and other non-exempt
9 employees were not compensated for all required meal period premiums.

10 14. Defendants failed to authorize and permit Plaintiff and other non-exempt
11 employees to take all duty-free 10-minute rest periods to which he was legally entitled, due to
12 Defendants' unlawful rest period policies/practices. Although Defendants scheduled first and
13 second rest periods, Plaintiff often worked through his rest periods due to the immediate nature
14 of his work duties. As mentioned above, Plaintiff operated a "Cincinnati Machine" that was
15 impossible to turn off once it initiated an operation, which could last hours per project. Moreover,
16 Defendants failed to authorize and permit any third rest periods for shifts in excess of 10.0 hours.

17 15. Furthermore, Defendants failed to compensate Plaintiff and other non-exempt
18 employees with an additional hour of premium pay at their respective regular rates of pay for each
19 workday in which a rest period violation occurred, as required by Labor Code § 226.7, and to the
20 extent that any rest period premiums were ever paid, they were also paid at the incorrect rate due
21 to the failure to properly incorporate the receipt of Incentive Pay.

22 16. Upon information and belief, during at least a portion of the relevant time period,
23 Defendants failed to maintain pay codes for the payment of meal and rest period premium
24 payments as required by Labor Code § 226.7.

25 17. Defendants also failed to pay Plaintiff and other non-exempt employees all sick
26 pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be
27 made at an employee's base rate of pay, as opposed to their regular rate of pay. Because Plaintiff
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1 and other non-exempt employees received Incentive Pay that was required to be included in their
2 regular rate of pay, but were not, Plaintiff and other non-exempt employees have not been paid
3 all sick pay wages owed to them.

4 18. During their respective employments with Defendants, Plaintiff and other non-
5 exempt employees were required to purchase and replace necessary tools required to perform
6 their work duties, including hammers and pliers. Plaintiff spent approximately \$100.00 on tools
7 during the relevant time period. Despite this, Defendants failed to reimburse Plaintiff and other
8 non-exempt employees for all necessary business expenses associated with purchasing and
9 replacing their tools in violation of Labor Code § 2802.

10 19. As a result of Defendants' failure to pay all overtime wages, minimum wages,
11 meal and rest period premium wages owed, and sick pay wages owed, Defendants failed to pay
12 all final wages owed to Plaintiff and other non-exempt employees upon their respective
13 separations from employment, and issued inaccurate wage statements.

14 20. Due to the extreme heat and cold experienced inside Defendants' warehouse where
15 Plaintiff and other non-exempt employees worked, Defendants failed to provide reasonably
16 comfortable temperatures in work areas consistent with industry-wide standards for the nature of
17 the work performed. Specifically, the "Cincinnati Machines" expelled steam and oils that were
18 prone to creating extreme heat, over 100 degrees Fahrenheit, in the summer, and in the winter,
19 the machines were slow to warm up, creating a cold environment. Defendants' failure to provide
20 air conditioning during the summer and heating in the winter exacerbated the extreme temperature
21 conditions in the warehouse. As a result, Defendants failed to maintain reasonably comfortable
22 work areas in violation of Wage Order 1, § 15 and California Labor Code § 558(a).

23 **CLASS ACTION ALLEGATIONS**

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

- 26 a. The Overtime Class consists of all Defendants' current and former non-exempt
27 employees in California who worked more than 8.0 hours per day and/or 40.0
28 hours per workweek and were subject to Defendants' timekeeping policies and/or

practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.

- b. The Minimum Wage Class consists of all 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 the Complaint through the present.
- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this action through the present.
- d. The Rest Period Class consists of all 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 Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who were required to purchase and replace tools for work-related purposes during the four years immediately preceding the filing of this action through the present.
- f. The Waiting Time Class consists of all formerly employed members of the Overtime Class, Meal Period Class, and/or Rest Period Class, and/or all of Defendants' non-exempt employees who earned Incentive Pay and received sick pay wages during the corresponding time period, who separated their employment from Defendants during the three years immediately preceding the filing of this action through the present.
- g. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present.

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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 are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. 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:

- i. Whether Defendants lawfully paid premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;
- ii. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
- 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 lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- vi. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804;
- vii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203; and
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226.

1 **24. Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Classes. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member, such as Defendants' uniform
5 overtime and minimum wage policies/practices, meal and rest period policies/practices, and
6 reimbursement policies/practices. As such, common questions predominate over individual
7 questions concerning each individual class member's showing as to their eligibility for recovery
8 or as to the amount of their damages.

9 **25. Typicality:** Plaintiff's claims are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as a non-exempt employee in California during the
11 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
12 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum
13 wages owed, was not provided all required meal periods, was not authorized and permitted to
14 take all required rest periods, was not reimbursed for his necessary business expenses incurred,
15 did not receive all final wages owed at the time of his separation from employment, and did not
16 receive accurate itemized wage statements.

17 **26. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
18 to represent fairly and adequately the interests of the members of the Classes. Moreover,
19 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
20 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
21 and-hour class actions in state and federal courts in the past, and are committed to vigorously
22 prosecuting this action on behalf of the members of the Classes.

23 **27. Superiority:** The California Labor Code is broadly remedial in nature and serves
24 an important public interest in establishing minimum working conditions and standards in
25 California. These laws and labor standards protect the average working employee from
26 exploitation by employers who have the responsibility to follow the laws and who may seek to
27 take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment. The nature of this action and the format of laws available to Plaintiff

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

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGES**

22 **(AGAINST ALL DEFENDANTS)**

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

24 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
25 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
26 overtime hours worked, and provide a private right of action for the failure to pay all overtime
27 compensation for overtime work performed.

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30. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

31. At all times relevant herein, Defendants caused Plaintiff and members of the Overtime Class to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

32. The foregoing policies and practices 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 and civil penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

34. Wage Order 1, § 4 and California Labor Code §§ 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 accrued thereon.

35. 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 all hours they were subject to Defendants’ control. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated for all hours actually worked as required by the California Labor Code and Wage Order 1.

1 36. California Labor Code § 1198 makes unlawful the employment of an employee
2 under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§
3 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal
4 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
5 as liquidated damages in an amount equal to the wages due and interest thereon.

6 37. As a direct and proximate result of Defendants' unlawful conduct as alleged
7 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including, but
8 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
9 entitled to recover economic and statutory damages and penalties and other appropriate relief as
10 a result of Defendants' violations of the California Labor Code and Wage Order 1.

11 38. Defendants' timekeeping policies/practices are unlawful and create an entitlement
12 to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid
13 amount of minimum wages, liquidated damages, including interest thereon, statutory penalties,
14 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210,
15 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

16 **THIRD CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed in their affirmative obligation to provide all of their non-exempt employees in California,
22 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
23 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11, for the
24 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
25 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
26 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
27 California Labor Code §§ 226.7 and 512.

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1 41. As a result, Defendants are responsible for paying premium compensation for meal
2 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
3 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, and Code of Civil Procedure §
4 1021.5.

5 **FOURTH CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

9 43. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of
10 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
11 period worked, or major fraction thereof.

12 44. As alleged herein, and due to Defendants' unlawful rest period policies and/or
13 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
14 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
15 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
16 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
17 California Labor Code § 226.7.

18 45. The foregoing violations create an entitlement to recovery by Plaintiff and
19 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
20 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
21 to Labor Code §§ 226.7, 516, and 558, Wage Order 1, and Code of Civil Procedure § 1021.5.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

24 **(AGAINST ALL DEFENDANTS)**

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

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

3 48. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
4 states that “any contract or agreement, express or implied, made by any employee to waive the
5 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
6 employee or his personal representative of any right or remedy to which he is entitled under the
7 laws of this State.”

8 49. As alleged herein, due to Defendants’ unlawful reimbursement practices,
9 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
10 necessary business expenses incurred, including the purchase of necessary tools.

11 50. As a proximate result of Defendants’ policies and/or practices in violation of Labor
12 Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to
13 damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to
14 proof at trial, pursuant to Labor Code § 2802.

15 **SIXTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **(AGAINST ALL DEFENDANTS)**

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

19 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
20 an employer to pay all wages earned immediately at the time of separation from employment in
21 the event the employer discharges the employee, or if the employee provides at least 72 hours of
22 notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of
23 his/her intent to quit, said employee’s wages become due and payable not later than 72 hours upon
24 said employee’s last date of employment.

25 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
27 at the time of their separation including, among other things, underpaid overtime and minimum
28 wages owed, meal and rest period premium wages, and underpaid sick pay wages. Further,

1 Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy
2 and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned
3 wages at the end of employment in a timely manner pursuant to the requirements of Labor Code
4 §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor
5 Code § 203.

6 54. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
7 Time Class all earned wages upon separation from employment results in a continued payment
8 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
9 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
10 plus reasonable attorneys' fees and costs of suit.

11 **SEVENTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(AGAINST ALL DEFENDANTS)**

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

15 56. Defendants have engaged, and continue to engage, in unfair and/or unlawful
16 business practices in California in violation of California Business and Professions Code § 17200
17 *et seq.*, by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
18 wages owed, failing to pay all required meal and rest period premium wages owed, failing to
19 reimburse for all necessary business expenses incurred, and failing to pay all final wages at the
20 time of separation from employment.

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

26 58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
27 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
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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.

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

60. Plaintiff was compelled to retain the services of counsel to file this court action to protect his 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.

EIGHTH CAUSE OF ACTION

WAGE STATEMENT PENALTIES

(AGAINST ALL DEFENDANTS)

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

62. 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 complete and accurate itemized wage statements that complied with the requirements of Labor Code § 226 *et seq.*

63. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with compliant wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum owed, and meal and rest period premiums owed, and deprived Plaintiff of the information necessary to identify the discrepancies in Defendants' reported data.

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

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

65. Plaintiff re-alleges and incorporated by reference all previous paragraphs.

66. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, as an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these

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

- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to pay Plaintiff and other aggrieved employees sick time pay at their regular rate of compensation in violation of Labor Code §§ 233, 246, 248, and 248.5;
- g. Failing to provide Plaintiff and other aggrieved employees reasonably comfortable temperatures in work areas consistent with industry-wide standards for the nature of the work performed in violation of Labor Code §§ 558(a) and 1198;
- h. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
- i. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- j. Failing to pay Plaintiff and aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- k. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174.

67. On June 16, 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 66 (a)-(k). Attached hereto as Exhibit 1 and incorporated by reference is a copy of the written notice to the LWDA. 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.

68. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all persons who were employed by Defendants in California and were classified as non-exempt at any time from one year prior to the date of Plaintiff's PAGA notice letter to the LWDA and the present.

69. 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.

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 payment of minimum wages, liquidated damages, and penalties owed 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, 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 compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

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 California Business and Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *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 \$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 employee pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 66 (a)-(k) above;

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 §§ 218.5, 1194 *et seq.*, 226, 2802, and 2699 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

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3 Dated: September 13, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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7 **DEMAND FOR JURY TRIAL**

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

10 Dated: September 13, 2023

HAINES LAW GROUP, APC

11
12 By:



Fletcher W. Schmidt
Attorneys for Plaintiff