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10 SUPERIOR COURT OF CALIFORNIA

11 FOR THE COUNTY OF SAN JOAQUIN

12 KAITLIN LIONAKIS, individually and on)
13 behalf of all other similarly situated)
14 employees,)

15 Plaintiff,

16 vs.

17 LANGETWINS WINE COMPANY, INC., a)
18 California Corporation;)
19 MARISSA LANGE, an individual; and)
20 DOES 1 to 100, inclusive,)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.

STK-CV-JOE-2023-13136

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. Failure to Reimburse Expenses
9. Failure to Timely Pay Wages
10. Failure to Maintain Records
11. Private Attorneys General Act

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

FILE BY FAX

1 Plaintiff KAITLIN LIONAKIS ("Plaintiff"), on behalf of herself and all other similarly
2 situated employees, hereby files this Complaint against LANGETWINS WINE COMPANY, INC., a
3 California Corporation; MARISSA LANGE, an individual; and DOES 1 to 100, inclusive
4 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges
5 the following:

6 INTRODUCTION

7 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest
9 period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and
10 unfair competition. Plaintiff has also alleged a Private Attorneys General Act claim.

11 JURISDICTION AND VENUE

12 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business & Professions Code, and Wage Order No. 8.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
16 Defendants reside in San Joaquin County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within San Joaquin County, and Defendants' obligation to pay wages arose in
18 San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
21 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
22 and other Aggrieved Employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written notice
23 via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately
24 June 9, 2023. Plaintiff provided facts and legal bases for her claims within the notice to the LWDA on
25 all violations asserted under the Private Attorneys General Act cause of action. Plaintiff submitted the
26 \$75.00 filing fee. The notice was also sent via certified mail to Defendants on the same day. Plaintiff is
27 informed and believes, that to date, the LWDA has not provided any response to Plaintiff's notice
28 correspondence. Accordingly, Plaintiff is informed and believes that she has exhausted all

1 administrative remedied pursuant to the Private Attorneys General Act and may bring this action on
2 behalf of herself and all Aggrieved Employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
3 *Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
4 includes all non-exempt employees who have, or continue to, work for Defendants in California from
5 June 9, 2022, to the present.

6 5. Plaintiff and Defendants entered into an agreement to toll the statute of limitations for the
7 claims alleged in this Complaint as of August 16, 2023. Accordingly, the class period is from August
8 16, 2019, to the present.

9 PARTIES

10 6. KAITLIN LIONAKIS is an individual over the age of eighteen (18) and is a resident
11 of the State of California.

12 7. On information and belief, Plaintiff alleges, LANGETWINS WINE COMPANY,
13 INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the
14 owner and operator of an industry, business and/or facility doing business in the State of California.

15 8. Plaintiff is informed and believes, and thereupon alleges, that MARISSA LANGE is
16 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
17 further alleges that MARISSA LANGE is an owner, director, officer, and/or managing agent of
18 LANGETWINS WINE COMPANY, INC. responsible for causing the violations outlined in the First
19 through Sixth, Eighth, and Ninth causes of action. As such MARISSA LANGE is individually liable
20 pursuant to California Labor Code section 558.1.

21 9. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
22 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
23 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
24 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
25 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
26 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
27 Plaintiff.

28 //

1 10. At all times mentioned herein, each Defendant was the agent or employee of each of the
2 other Defendants and was acting within the course and scope of such agency or employment. The
3 Defendants are jointly and severally liable to Plaintiff.

4 11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
5 were members of and/or engaged in a joint employment, joint venture, partnership and common
6 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
7 joint venture, partnership and common enterprise.

8 12. Defendants, and each of them, now and/or at all times mentioned in this Complaint
9 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

10 13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
11 wrongs, complaints, injuries and/or damages alleged in this Complaint.

12 **CLASS ALLEGATIONS**

13 14. Plaintiff brings the First through Tenth Causes of Action on behalf of herself and all
14 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
15 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

16 All non-exempt employees who have worked, or continue to work, for
17 Defendants in California from August 16, 2019, to the present.

18 15. This action has been brought and may be properly maintained as a class action,
19 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
20 defined community of interests in the litigation and the proposed class is easily ascertainable.

21 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
22 is impracticable under the circumstances of this case. While the exact number of class
23 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
24 Defendants have employed fifty (50) or more individuals falling within the above stated
25 class definition throughout the State of California during the applicable statute of
26 limitations, who were subjected to the policies and practices outlined in this Complaint.
27 As such, joinder of all members of the putative class is not practicable.
28

1 (b) Common Questions Predominate: Common questions of law and fact exist as to all
2 members of the putative class and predominate over questions that affect only individual
3 members of the class. These common questions of law and fact include, without
4 limitation, the following:

- 5 (1) Whether Defendants paid putative class members for all hours worked;
- 6 (2) Whether Defendants paid all overtime wages owed;
- 7 (3) Whether Defendants failed to correctly calculate putative class members' regular
8 rates of pay;
- 9 (4) Whether Defendants maintained accurate payroll records;
- 10 (5) Whether Defendants failed to authorize and permit all meal periods;
- 11 (6) Whether Defendants failed to authorize and permit all rest periods;
- 12 (7) Whether putative class members were required to use their personal cellphones
13 for work without reimbursement;
- 14 (8) Whether Defendants failed to timely pay wages to putative class members' in
15 accordance with Labor Code section 204;
- 16 (9) Whether Defendants maintained accurate time and payroll records for putative
17 class members;
- 18 (10) Whether as a result of Defendants' policies and practices putative class members
19 received all wages, due and owing, at the time of their termination or separation;
20 and
- 21 (11) Whether Defendants provided putative class members with wage statements that
22 complied with Labor Code section 226.

23 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
24 class. The putative class also sustained damages arising out of Defendants' common
25 course of conduct in violation of the law as complained of herein. Defendants failed to
26 pay Plaintiff and putative class members all regular and overtime wages owed, failed to
27 provide all meal and rest periods, and failed to reimburse for personal cellphone use.
28 Additionally, Defendants issued Plaintiff and all members of the putative class wage

1 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
2 each member of the putative class will have suffered the same type of harm and seek the
3 same type of recovery based on the same legal theories.

4 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
5 putative class. For all relevant times, Plaintiff resided in California and worked for
6 Defendants in California. Moreover, Plaintiff is an adequate representative of the
7 putative class as Plaintiff has no interests that are adverse to those of putative class
8 members. Additionally, Plaintiff has retained counsel who has substantial experience in
9 complex civil litigation and wage and hour matters.

10 (e) Superiority: A class action is superior to other available means for the fair and efficient
11 adjudication of the controversy since individual joinder of all members of the putative
12 class is impracticable. Class action treatment will permit a larger number of similarly
13 situated persons to prosecute their common claims in a single forum simultaneously,
14 efficiently, and without the unnecessary duplication of effort and expense that numerous
15 individual actions would engender. Further, as damages suffered by each individual
16 member of the class may be relatively small, the expenses and burden of the individual
17 litigation would make it difficult or impossible for individual members of the class to
18 redress the wrongs done to them, and an important public interest will be served by
19 addressing the matter as a class action. The cost to the court system of adjudication of
20 such individualized litigation would be substantial. Individualized litigation would also
21 present the potential for inconsistent or contradictory judgments.

22 16. Plaintiff is unaware of any difficulties that are likely to be encountered in the
23 management of this action that would preclude its maintenance as a class action.

24 GENERAL ALLEGATIONS

25 17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully
26 set forth herein.

27 18. Plaintiff worked for Defendants from approximately September 2021 to October 2022.
28 Defendants failed to accurately record Plaintiff's and similarly situated employees' hours worked.

Defendants often manually adjusted Plaintiff's and similarly situated employees' time records, which resulted in a failure to pay Plaintiff and similarly situated employees for all hours worked, including time over eight (8) hours in a day and forty (40) hours in a week. Accordingly, Defendants did not pay Plaintiff and similarly situated employees for all minimum and overtime wages they were owed. Defendants also instructed Plaintiff and similarly situated employees to clock out before the 12-hour mark regardless of whether they continued to perform work. Additionally, at the end of the season, Defendants paid out non-discretionary bonuses to employees. Although these bonuses were earned over the course of the season, Defendants failed to make any adjustments to premium wage payments like overtime, meal and rest period premiums, and sick leave pay covering the same period. As a result, this also resulted in unpaid overtime, meal and rest period premiums and sick leave pay.

19. Defendants did not authorize and permit Plaintiff and similarly situated employees to take all meal and rest periods owed to them. The company was short staffed, and Defendants had strict deadlines for work to be completed. Plaintiff and similarly situated employees were employed for periods of more than five hours without receiving an uninterrupted thirty (30) minute meal period. Plaintiff and similarly situated employees did not receive an uninterrupted ten (10) minute rest period every four hours or major fraction thereof they worked. Defendants required Plaintiff and similarly situated employees to clock out for meal periods they did not receive. If Plaintiff and similarly situated employees did not receive a meal period, but did not clock out as instructed, Defendants would manually adjust Plaintiff's and similarly situated employees' time. In addition, Defendants did not have a policy authorizing and permitting Plaintiff and similarly situated employees to take second meal periods they were entitled to. Plaintiff and similarly situated employees worked longer than ten (10) hours in a day without being provided second meal periods. Defendants also modified and made unauthorized adjustments to Plaintiff's and similarly situated employees' timecards to cover up its failure to provide first meal period before the completion of the fifth hour worked.

20. Defendants required Plaintiff and similarly situated employees to incur expenses for work without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and similarly situated employees to use their personal cellphones to take and send/upload work related

1 photos and communicate with management and other lab locations regarding work. Defendants did not
2 reimburse Plaintiff or similarly situated employees for the use of their personal cellphones.

3 21. Defendants failed to provide Plaintiff and similarly situated employees with accurate
4 wage statements. The wage statements Defendants provided did not accurately itemize employees'
5 gross and net wages, meal period premiums, rest period premiums, total hours worked, and the
6 corresponding number of hours worked at each hourly rate.

7 22. At the time of Plaintiff's and similarly situated employees' termination or separation,
8 Plaintiff and similarly situated employees had minimum wages, overtime wages, meal and rest period
9 premiums, and paid sick leave owing to them. In addition, for the reasons described above, each pay
10 period Plaintiff and similarly situated employees had wages they earned that were not timely paid to
11 them in accordance with Labor Code section 204.

12 23. Defendant LANGETWINS WINE COMPANY, INC. identified MARISSA LANGE in
13 its filings with the California Secretary of State during the claim period as its Chief Executive Officer
14 and a Director. Plaintiff is informed and believes that MARISSA LANGE was responsible for creating,
15 and electing to implement or participating in creating and electing to implement LANGETWINS WINE
16 COMPANY, INC.'s payroll and compensation policies and practices, or that MARISSA LANGE was
17 aware of such policies and practices and ratified them.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**
20 **FAILURE TO PAY OVERTIME WAGES**
21 **(As to all Defendants)**

22 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
23 set forth herein.

24 25. During the period Plaintiff was employed by Defendants, Defendants were required to
25 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
26 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
27 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 8, section (3)(A);*
28 Cal. Lab. Code §§ 510, 1194.

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1 26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
2 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
3 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours they
4 worked at the correct rate of pay.

5 27. Plaintiff and similarly situated employees were not exempt from overtime protections
6 employees under the California Wage Orders and Labor Code.

7 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
8 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
9 the extent pertinent as if set forth here in full.

10 **SECOND CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGES**
 (As to all Defendants)

12 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
13 set forth herein.

14 30. For the period preceding the filing of this Complaint, Defendants were required to
15 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
16 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 8, section 4(A); Cal. Lab. Code §
17 1194. Defendants failed to pay Plaintiff and similarly situated employees for all time they spent
18 working for Defendants.

19 31. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of
20 their obligation to pay the minimum wage for each hour worked but failed to do so.

21 32. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
22 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
23 the extent pertinent as if set forth here in full.

24 **THIRD CAUSE OF ACTION**
25 **MEAL PERIOD VIOLATIONS**
 (As to all Defendants)

26 33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though fully
27 set forth herein.

28 //

34. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

35. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 8, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

36. California Labor Code section 512 and Wage Order No. 8 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

37. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

38. Defendants further failed to pay Plaintiff and similarly situated employees all applicable meal period premiums at the correct rate for any such missed meal breaks.

39. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

1 41. An employer must provide an employee a rest period in accordance with the
2 applicable Wage Order and California Labor Code section 226.7.

3 42. California Labor Code section 226.7 and Wage Order No. 8, section 12(A) require an
4 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
5 four (4) hours or a major fraction thereof.

6 43. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
7 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
8 they worked more than four (4) hours or a major fraction thereof.

9 44. Defendants further failed to pay Plaintiff and similarly situated employees all
10 applicable rest period premiums at the correct rate for any such missed rest periods.

11 45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
12 employees have been damaged as stated in the section below entitled "DAMAGES," which is
13 incorporated here to the extent pertinent as if set forth here in full.

14 **FIFTH CAUSE OF ACTION**
15 **WAGE STATEMENT VIOLATIONS**
(As to all Defendants)

16 46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully
17 set forth herein.

18 47. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
19 statement to an employee, semimonthly or at the time of each payment of wages, showing:

20 *(1) gross wages earned, (2) total hours worked by the employee, except for*
21 *any employee whose compensation is solely based on a salary and who is*
22 *exempt from payment of overtime under subdivision (a) of Section 515 or*
23 *any applicable order of the Industrial Welfare Commission, (3) the*
24 *number of piece-rate units earned and any applicable piece rate if the*
25 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
26 *all deductions made on written orders of the employee may be aggregated*
27 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
28 *period for which the employee is paid, (7) the name of the employee and*
the last four digits of his or her social security number or an employee
identification number other than a social security number, (8) the name
and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the
name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate
by the employee. The deductions made from payment of wages shall be

1 *recorded in ink or other indelible form, properly dated, showing the*
2 *month, day, and year, and a copy of the statement and the record of the*
3 *deductions shall be kept on file by the employer for at least three years at*
4 *the place of employment or at a central location within the State of*
5 *California.*

6 48. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
7 itemized statement or failed to provide an accurate and complete itemized statement showing the
8 requirements set forth in California Labor Code section 226(a). The paystubs Defendants issued did
9 not itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal
10 and rest period premiums owed, accurate paid sick time owed, all applicable hourly rates in effect
11 during the pay period and the corresponding number of hours worked at each hourly rate, and
12 accurate gross and net wages earned. Plaintiff and similarly situated employees were not able to
13 promptly and easily determine all information required to be stated under Labor Code section 226(a)
14 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
15 confusion over whether they received all wages owed and were prevented from effectively
16 challenging information on their wage statements.

17 49. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
18 employees have been damaged as stated in the section below entitled "DAMAGES," which is
19 incorporated here to the extent pertinent as if set forth here in full.

20 **SIXTH CAUSE OF ACTION**
21 **WAITING TIME PENALTIES**
22 **(As to all Defendants)**

23 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully
24 set forth herein.

25 51. An employer must pay an employee who is terminated all unpaid wages immediately
26 upon termination. *See* Cal. Lab. Code § 201.

27 52. An employer must pay an employee who resigns all unpaid wages within seventy-two
28 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

53. Plaintiff and similarly situated employees did not receive all wages, including minimum
and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
within the required time after their separation from employment.

54. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

55. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge of the hours that Plaintiff and similarly situated employees were working, modifications being made to their time records, and meal periods that were not received. In addition, Defendants had knowledge employees were receiving additional non-discretionary remuneration, such as bonuses, in addition to their basic hourly rate that were not included in the regular rate of pay for premium pay purposes. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet failed to pay the full value of the remaining wages owed.

56. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION UNFAIR COMPETITION

(As to Defendant LANGETWINS WINE COMPANY, INC. and DOES 1 to 100)

57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully set forth herein.

58. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

59. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, meal and rest premiums, phone reimbursement, and paid sick time.

60. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

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1 61. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
2 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
3 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
4 sections 17203, 17208, violations of California Labor Code sections 226.7, 246, 510, 512, and 2802 all
5 in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this
6 Action.

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO REIMBURSE EXPENSES**
9 **(As to all Defendants)**

10 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
11 set forth herein.

12 63. California Labor Code section 2802(a) states that "An employer shall indemnify his or
13 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
14 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
15 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
16 unlawful."

17 64. Defendants required Plaintiff and similarly situated employees to use their personal
18 cellphones as described above but failed to reimburse them for such use.

19 65. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **NINTH CAUSE OF ACTION**
23 **FAILURE TO TIMELY PAY WAGES**
24 **(As to all Defendants)**

25 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
26 set forth herein.

27 67. Labor Code section 204(a) provides that "all wages, other than those mentioned in
28 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable
twice during each calendar month, on days designated in advance by the employer as the regular
paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid

1 for between the 16th and the 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between
3 the 1st and 10th day of the following month. As stated above, Defendants failed to comply with this
4 provision by paying Plaintiff and similarly situated employees for wages earned between the 1st and 15th
5 and between the 16th and last day of the month beyond the maximum time allowed under the statute.

6 68. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **TENTH CAUSE OF ACTION**
10 **FAILURE TO MAINTAIN ACCURATE RECORDS**
11 **(As to all Defendants)**

12 69. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as though fully
13 set forth herein.

14 70. Labor Code section 1174 requires employers to preserve and keep accurate employee
15 time and payroll records for at least three years and to keep a record of the names and addresses of all
16 current employees. Defendants failed to maintain the accurate records required by law and, instead,
17 maintained incomplete, inaccurate records regarding Plaintiff and similarly situated employees wage
18 records and hours worked.

19 71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **ELEVENTH CAUSE OF ACTION**
23 **PRIVATE ATTORNEYS GENERAL ACT**
24 **(As to all Defendants)**

25 72. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 71 as though fully
26 set forth herein.

27 73. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
28 following provisions of the Labor Code in their dealings with him and other similarly situated current
and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 8, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 8, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 8, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 8, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

74. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

75. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

1 3. As to the Second Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 4 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 5 Code section 1194;
- 6 d. Liquidated damages pursuant to California Labor Code section 1194.2;

7 4. As to the Third Cause of Action:

- 8 a. Wages in an amount to be proven at trial;
- 9 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 10 section 1021.5;

11 5. As to the Fourth Cause of Action:

- 12 a. Wages in an amount to be proven at trial;
- 13 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 14 section 1021.5;

15 6. As to the Fifth Cause of Action:

- 16 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 17 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 18 violation occurred and one hundred dollars (\$100.00) per employee for each
- 19 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 20 (\$4,000.00);
- 21 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 22 226(e);

23 7. As to the Eighth Cause of Action:

- 24 a. An amount to be proven at trial;
- 25 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

26 8. As to the Ninth Cause of Action:

- 27 a. For any initial violations, \$100 for each failure to pay each employee;
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- 1 b. For each subsequent violation or any willful or intentional violations \$200 for
2 each failure to pay each employee, plus 25 percent of the amount unlawfully
3 withheld;

4 9. As to the Tenth Cause of Action:

- 5 a. For civil penalties of \$500 per employee pursuant to Labor Code section 1174.5;
6 b. For civil penalties of \$250 per employee per violation in an initial citation and
7 \$1,000 per employee for each violation in a subsequent citation.

8 7. As to the Eleventh Cause of Action:

- 9 a. For civil penalties as provided for in the Labor Code for each enumerated
10 violation;
11 b. For those Labor Code sections, the violation of which there is no civil penalty
12 provided, the default penalty provided in Labor Code section 2699(f): for any
13 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
14 period; For any subsequent violation, two hundred dollars (\$200) for each
15 aggrieved employee per pay period;
16 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
17 d. For any other remedies as allowed by law and/or deemed appropriate by the
18 Court;

19 8. For such other and further relief as this Court may deem just and proper,
20 including, but not limited to:

- 21 a. Wages as proved at trial;
22 b. Injunctive and Declaratory relief;
23 c. Attorney's fees and costs as provided for by law; and
24 d. Interest.

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2 Dated: December 5, 2023

Shimoda & Rodriguez Law, PC

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4 By: Brittany Berzin
5 Galen T. Shimoda
6 Justin P. Rodriguez
7 Brittany V. Berzin
8 Attorneys for Plaintiff
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