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FILED
 Superior Court of California
 County of Los Angeles

08/11/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JASON WATERS, on behalf of himself and all
 others similarly situated,

Plaintiff,

vs.

HAWX SERVICES, LLC, a limited liability
 company; and DOES 1 through 100, Inclusive,

Defendants.

Case No. 23STCV12811

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

- (1) **FAILURE TO PAY OVERTIME
 WAGES (LABOR CODE §§ 204, 510,
 558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 512, 1198);**
- (3) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516, 1198)**
- (4) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226, *et seq.*);**
- (5) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (6) **FAILURE TO REIMBURSE
 BUSINESS EXPENSES (LABOR
 CODE §§ 2802, 2804);**
- (7) **UNFAIR COMPETITION (BUS. &
 PROF. CODE § 17200, *et seq.*).**
- (8) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Jason Waters (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against Hawx
3 Services, LLC, a limited liability company; and Does 1 through 100, inclusive (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby bring this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558, 1194,
9 1197, 1198, 2802, 2804, 2698, *et seq.*; and Industrial Welfare Commission Wage Order No. 4
10 (“Wage Order 4”), in addition to seeking declaratory relief and restitution. This class action is
11 brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction
12 over Defendants’ violations of the California Labor Code because the amount in controversy
13 exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
18 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1194, 1197, 1198, 2802, 2804, 2698, *et seq.*; California
28 Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 4, which

1 sets employment standards for employees in professional, technical, clerical, mechanical and
2 similar occupations.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as a pest control company, and that they have employed Plaintiff and other similarly
6 situated non-exempt employees within Los Angeles County and the state of California.

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

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

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

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
27 Members (as defined in Paragraph 17).

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GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee from approximately April 2022 until approximately August 2022.

10. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system that resulted in Plaintiff not being compensated for all overtime and/or double-time hours worked. Specifically, for at least a portion of the putative class period, Defendants failed to properly compensate Plaintiff and other non-exempt employees for daily overtime and/or double-time wages. Plaintiff worked shifts in excess of 8 hours in a day, however, Defendants failed to pay Plaintiff overtime wages for the hours he worked in excess of 8 in a day and failed to pay Plaintiff double-time wages for those hours he worked in excess of 12 in a day. Instead, Defendants compensated Plaintiff and other non-exempt employees at their base rate of pay for all hours worked in a day and only compensated Plaintiff and other non-exempt employees' overtime when working over 40 hours in a week. For example, Plaintiff's weekly timecard for the week of June 20, 2022 to June 26, 2022 reflects that Plaintiff worked 12.08 hours on June 20, 10.38 hours on June 21, 11.93 hours on June 22, 11.7 hours on June 23, and 13.05 hours on June 24, 2022. In this workweek, Plaintiff worked a total of 18.01 overtime hours (i.e., 4 overtime hours on June 20, 2.38 overtime hours on June 21, 3.93 overtime hours on June 23, and 4 overtime hours on June 24), and worked 1.13 double-time hours (i.e., 0.08 double-time hours on June 20 and 1.05 double-time hours on June 24). However, Defendants only credited (and paid) Plaintiff for 17.15 overtime hours in that workweek, and zero double-time hours. This is because Defendants only began crediting Plaintiff with overtime wages on June 23, 2022, after Plaintiff had worked over 40 hours for the week, and failed to account for any double-time hours. Likewise, in the following workweek beginning June 27, 2023, Plaintiff's time records reflect that he worked 8.7 hours on June 27, 12.17 hours on June 28, 10.2 hours on June 29, and 12.52 hours on June 30, but Defendants did not credit Plaintiff for any overtime or double-time compensation for those workdays. On information and belief, Defendants have paid other non-exempt employees in the same manner. As a result, Defendants have failed to pay Plaintiff and other non-exempt employees all overtime and double-time wages owed to them.

1 11. Defendants have also failed to provide Plaintiff and other non-exempt employees
2 with all statutorily mandated meal periods, due to Defendants' meal period policies/practices.
3 Specifically, the workload Defendants imposed on Plaintiff and other non-exempt employees
4 sometimes made it impracticable to take a 30-minute off duty meal period before the end of the
5 fifth hour of work, and/or a second 30-minute off-duty meal period on shifts over 10 hours.
6 Indeed, Plaintiff's time records reflect many missed, short, and late meal periods. While
7 Defendants did pay some meal period premiums (discussed *infra*), there were other instances that
8 Defendants failed to pay the meal period premiums required by Labor Code § 226.7. For example,
9 in the week beginning June 20, 2022 mentioned in the immediately preceding paragraph, Plaintiff
10 worked over 10.0 hours each workday, but his time records reflect that he was not provided a
11 second meal period on any of those workdays, including on workdays in which he worked more
12 than 12.0 hours. As another example, on June 3, 2022, Plaintiff's time records reflect that his
13 meal period was less than 30 minutes, and on June 9, 2022, Plaintiff's time records reflect that he
14 worked over 12 hours without being provided a second meal period, but no meal period premium
15 is reflected in Plaintiff's wage statement for the June 1-15, 2022 pay period. Upon information
16 and belief, during at least a portion of the putative class period, Defendants maintained no payroll
17 code or other mechanism for paying meal period premiums when Defendants failed to provide a
18 legally compliant meal period.

19 12. Defendants have also failed to authorize and permit all statutorily mandated rest
20 periods to Plaintiff and other non-exempt employees. Specifically, Defendants sometimes have
21 failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major
22 fraction thereof, due to the workload Defendants imposed on Plaintiff and other non-exempt
23 employees, as described above. In those instances that Defendants failed to authorize and permit
24 Plaintiff and other non-exempt employees to take a legally compliant rest period, Defendants
25 failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and
26 belief, during at least a portion of the putative class period, Defendants maintained no payroll
27 code or other mechanism for paying rest period premiums when Defendants failed to authorize
28 and permit a legally compliant rest period.

1 13. In addition, Defendants have failed to reimburse Plaintiff and other employees for
2 expenses they incurred in the course of their employment. Specifically, Defendants required
3 Plaintiff and other employees to use their personal cell phones to download one or more mobile
4 applications to clock in and out of work during the multi-month training period. Plaintiff and other
5 employees were also directed by Defendants to use their personal cell phones to text management
6 their hours worked when the mobile applications were down. Additionally, Plaintiff and other
7 employees were required to use their personal cell phones to send and receive work-related texts
8 and calls to and from management. Despite requiring Plaintiff and other employees to use their
9 personal cellular phones for work-related purposes, Defendants have failed to reimburse Plaintiff
10 and other employees for any portion of their personal cell phone bills. As a result of the foregoing,
11 Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and
12 *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

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

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

19 16. The wage statements issued to Plaintiff and other employees were also facially
20 deficient, in that the wage statements often failed to list the correct total hours worked and total
21 hours worked at each rate of pay, and therefore, failed to comply with Labor Code § 226(a)(2)
22 and (a)(9). Specifically, and as mentioned above, Defendants sometimes paid Plaintiff for an
23 additional hour of pay when Plaintiff's time keeping records reflected a meal period violation.
24 However, Defendants included that additional hour of premium pay in Plaintiff's "regular" hours
25 and also in his "total hours worked" on the wage statement, even though meal period premium
26 payments are not payments for hours worked. For example, in the pay period of June 15-30,
27 2022, Plaintiff's time records reflect that Defendants' timekeeping system flagged 6 instances of
28 "short lunch" or "no lunch" and paid 6 meal period premiums. However, on Plaintiff's wage

statement for that pay period, rather than list those 6 hours of pay as meal period premiums, the wage statement counts them as additional “regular hours” and lumps those premiums together with Plaintiff’s other “regular hours” worked, and also includes the meal period premiums as hours counted in Plaintiff’s “total hours worked.” As a result, the wage statements issued by Defendants were facially deficient in violation of Labor Code § 226(a)(2) and (a)(9).

CLASS ACTION ALLEGATIONS

17. Class Definitions: Plaintiff bring this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of the Defendants’ current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and were subject to Defendants’ timekeeping and payroll practices, at any time from four years immediately preceding the filing of this action through the present.

b. The Meal Period Class consists of all of the Defendants’ current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a 30-minute meal period beginning before the end of the fifth hour of work reflected in their time records, and/or who worked at least one shift in excess of 10.0 hours without a second 30-minute meal period beginning before the end of the tenth hour of work reflected in their time records, at any time from four years immediately preceding the filing of this action through the present.

c. The Rest Period Class consists of all of the Defendants’ current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

d. The Wage Statement Class consists of (i) all members of the Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement at any time from one year immediately preceding the filing of this lawsuit through the present; and (ii) all of the Defendants’ current and former non-exempt employees in California who were issued a wage statement that included meal period premium pay reported as “regular” hours

and/or in “total hours worked” at any time from one year immediately preceding the filing of this action through the present.

e. The Waiting Time Class consists of all members of the Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years immediately preceding the filing of this action through the present.

f. The Expense Reimbursement Class consists of all of Defendants’ employees who were required to use their personal cellular phones for work-related purposes, at any time from four years prior to the filing of this action through the present.

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

19. **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:

- i. Whether Defendants’ timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California’s overtime laws;
- ii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;

- 1 v. Whether Defendants paid all wages due to members of the Waiting Time
2 Class at the time of separation of employment; and
3 vi. Whether Defendants properly reimbursed expenses incurred by members
4 of the Expense Reimbursement Class.

5 20. **Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual members of the Classes. The common
7 questions of law set forth above are numerous and substantial and stem from Defendants' policies
8 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
9 overtime, wage statement, meal period, rest period, and final wage policies/practices. As such,
10 common questions predominate over individual questions concerning each class member's
11 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

12 21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
13 Plaintiff was employed by Defendants as a non-exempt employee in California during the
14 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
15 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime
16 wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished
17 with inaccurate wage statements, and was deprived of all final wages upon his separation of
18 employment from Defendants.

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

25 23. **Superiority:** The Labor Code is broadly remedial and serves an important public
26 interest in establishing minimum working conditions and standards in California. These laws and
27 labor standards protect the average working employee from exploitation by employers who have
28 the responsibility to follow the laws and who may seek to take advantage of superior economic

1 and bargaining power in setting onerous terms and conditions of employment. The nature of this
2 action and the format of laws available to Plaintiff and members of the Classes make the class
3 action format a particularly efficient and appropriate procedure to redress the violations alleged
4 herein. If each employee were required to file an individual lawsuit, Defendants would necessarily
5 gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources
6 of each individual plaintiff with their vastly superior financial and legal resources. Moreover,
7 requiring each member of the Classes to pursue an individual remedy would discourage the
8 assertion of lawful claims by employees who would be disinclined to file an action against their
9 former and/or current employer for real and justifiable fear of retaliation and permanent damages
10 to their careers at subsequent employment. Further, the prosecution of separate actions by
11 individual class members would create a substantial risk of inconsistent or varying verdicts or
12 adjudications with respect to the individual class members against Defendants herein; and which
13 would establish potentially incompatible standards of conduct for Defendants. Further, the claims
14 of the individual members of the Classes are not sufficiently large to warrant vigorous individual
15 prosecution considering all of the concomitant costs and expenses attending thereto. As such, the
16 Classes in Paragraph 17 are maintainable under Section 382 of the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME WAGES**

19 **(AGAINST ALL DEFENDANTS)**

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

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

25 26. At all times relevant herein, Defendants were required to properly compensate
26 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
27 Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an
28 employee “One and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess

of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

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

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, for the reasons set forth in this Complaint.

30. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 4, Labor Code §§ 226.7 and 512, Civil Code § 3287, Code of Civil Procedure § 1021.5, and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

33. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally mandated rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

34. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other things, all wages earned, all meal and rest period premium wages earned, all hours worked at each pay rate, and total hours worked, in violation of Labor Code § 226(a).

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

38. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor

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

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime wages and unpaid meal and rest period premium wages.

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

43. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members their earned wages upon separation of employment results in a continued payment of daily wages up to 30 days from when the wages were due. Plaintiff and Waiting Time Class members are entitled to compensation per Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 46. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
10 “any contract or agreement, express or implied, made by any employee to waive the benefits of
11 this article or any part thereof, is null and void, and this article shall not deprive any employee or
12 his personal representative of any right or remedy to which he is entitled under the laws of this
13 State.”

14 47. Due to Defendants’ unlawful policy and practice of requiring employees to use
15 their personal cellular phones for work purposes, and their failure to reimburse Plaintiff and
16 members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

17 48. As a proximate result of Defendants’ policies and/or practices in violation of Labor
18 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered
19 damages in sums, which will be shown according to proof.

20 49. Plaintiff and members of the Expense Reimbursement Class are entitled to
21 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

22 50. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
23 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
24 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
25 accrue from the date on which they incurred the initial necessary expenditure.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 52. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
7 Plaintiff and the Classes all overtime wages due, failing to provide meal periods or pay meal
8 period premium wages, failure to authorize and permit rest periods or pay rest period premium
9 wages, failing to furnish accurate and complete itemized wage statements, failing to pay all earned
10 wages at separation of employment, and failing to indemnify or reimburse business expenses.

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

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

20 55. The acts complained of herein occurred within the four years immediately
21 preceding the filing of this action.

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

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

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

58. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the 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 \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees’ respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;

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- 1 c. Failing to authorize and permit all legally required rest periods and failing to pay
2 rest period premiums to Plaintiff and other aggrieved employees at the employees’
3 respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516,
4 558, and 1198;
- 5 d. Failing to furnish Plaintiff and other aggrieved employees with accurate and
6 complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- 7 e. Failing to pay all wages owed to Plaintiff and other aggrieved former employees
8 at their separation of employment, in violation of Labor Code §§ 201-203; and
- 9 f. Failing to reimburse Plaintiff and other aggrieved employees for all work-related
10 expenses, in violation of Labor Code §§ 2802, 2804, and 1198.

11 59. On or about June 6, 2023, Plaintiff notified Defendant Hawx Services, LLC via
12 certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its
13 website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a
14 claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations
15 of the California Labor Code identified in paragraph 58 (a)-(f) above. Now that sixty-five days
16 have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff
17 has exhausted his administrative requirements for bringing a claim under the Private Attorneys
18 General Act with respect to these violations.

19 60. Based on the foregoing, Plaintiff seeks to represent himself, the State of California,
20 and all aggrieved employees as defined by Labor Code § 2699(c), which includes all current and
21 former employees who worked for Defendants in California at any time from one year prior to
22 the submission of Plaintiff’s PAGA notice to the present.

23 61. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect his interests and the interests of other aggrieved employees, and to assess and collect the
25 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
26 he is entitled to recover under California Labor Code § 2699(g).

27 ///

28 ///

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, 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, 516, and 1198;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
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 § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to

1 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
2 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
3 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
4 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
5 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
6 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
7 Labor Code § 2699(f);

8 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
9 California Labor Code §§ 218.6, 1194(a), 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
10 California Constitution;

11 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
12 226(e), 1194 *et seq.*, 2802(c), 2699(g) and Code of Civil Procedure § 1021.5; and

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

14
15 Date: August 11, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

16
17 By:


Tuvia Korobkin
Attorney for Plaintiff

18
19 **DEMAND FOR JURY TRIAL**

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

21
22
23 Dated: August 11, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

24
25 By:


Tuvia Korobkin
Attorney for Plaintiff

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 11846 Ventura Blvd., Suite 100, Studio City, CA 91604

On the below date, I served a true copy of the foregoing documents described as:

FIRST AMENDED COMPLAINT

on all interested parties in this action directed as follows:

Mark A. Vegh Esq. Yue (Kat) Zhao, Esq. Reese Smalley Wizeman & Schweitzer, LP 1265 Willis St. Redding, CA 96099-4647	Email Adresses: mark.vegh@rswslaw.com kat.zhao@rswslaw.com barb.ford@rswslaw.com
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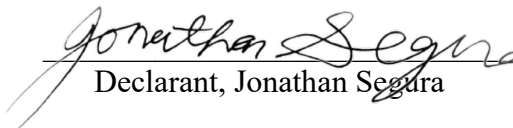
/ / (BY MAIL): I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

/ / (BY OVERNIGHT MAIL): I am readily familiar with the firm's practice of collection and processing for overnight delivery. Under such practice, I caused the aforementioned document(s) to be delivered to an overnight courier service, carrier fees paid and deposited in an overnight delivery drop-box and/or delivered to an overnight carrier.

/ X / (BY ELECTRONIC SERVICE): BY ELECTRONIC TRANSMISSION) I served the foregoing by electronic transmission to the email addresses listed above, pursuant to Cal. Code Civ. Proc. § 1010.6 and Cal. Rules of Court Rule 2.251 via caseanywhere.com.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on August 11, 2023, at Studio City, California.


Declarant, Jonathan Segura