

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 02 2023

BY 
GLORIA MARIN, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JUAN ROBERTO ACEVEDO OROZCO, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

FONTANA AUTOMOTIVE SERVICES,
INC., dba FONTANA MAZDA, a California
Corporation; ONTARIO NISSAN, INC., dba
METRO NISSAN OF MONTCLAIR, a
California Corporation; REDLANDS
AUTOMOTIVE SERVICES, INC., dba
METRO NISSAN OF REDLANDS, a
California Corporation; NISSAN OF
FONTANA, INC., dba NISSAN OF SAN
BERNARDINO, a California Corporation;
MONTCLAIR AUTOMOTIVE SERVICES,
INC., dba INFINITI OF MONTCLAIR, a
California Corporation; PUENTE HILLS
AUTOMOTIVE SERVICES, INC., dba
PUENTE HILLS MAZDA, a California
Corporation, and DOES 1 through 100,

Defendants.

CASE NO.: CIVSB 2317229

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 558);
- (5) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE §226 *et seq.*);
- (6) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Juan Acevedo Orozco (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Fontana Automotive Services, Inc., a California Corporation;
4 Ontario Nissan, Inc., a California Corporation; Redlands Automotive Services, Inc., a California
5 Corporation; Nissan of Fontana, Inc., a California Corporation; Montclair Automotive Services,
6 Inc., a California Corporation; Puente Hills Automotive Services, Inc., a California Corporation;
7 and Does 1 through 100, inclusive (collectively “Defendants”), and on information and belief
8 alleges as follows:

9 **JURISDICTION**

10 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
11 action for recovery of unpaid wages, and penalties under California Labor Code §§ 201-204, 226
12 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, and
13 California Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and
14 Industrial Welfare Commission Wage Order 4 (“Wage Order 4”) in addition to seeking
15 declaratory relief, injunctive relief, and restitution. This Complaint is brought pursuant to
16 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
17 of the California Labor Code because the amount in controversy exceeds this Court’s
18 jurisdictional minimum.

19 **VENUE**

20 2. Venue is proper in this judicial district pursuant to California Code of Civil
21 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the
22 County of San Bernardino. Defendants own, maintain offices, transact business, have an agent or
23 agents within the County of San Bernardino, and/or otherwise are found within the County of San
24 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
25 process.

26 **THE PARTIES**

27 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
28 Plaintiff was, and currently is, a California resident, residing in the County of San Bernardino.

1 During the four years immediately preceding the filing of the Complaint in this action, and within
2 the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
3 employed by Defendants as a non-exempt employee in San Bernardino County. Plaintiff was, and
4 is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or
5 property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
6 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, California
7 Business and Professions Code § 17200 *et seq.*, and Wage Order 4 which sets employment
8 standards for professional, technical, clerical, mechanical and similar occupations.

9 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
10 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
11 continue to do) business within the County of San Bernardino by operating commercial car
12 dealerships and maintenance shops, and employed Plaintiff and other, similarly situated non-
13 exempt employees within San Bernardino County and the State of California and, therefore, were
14 (and are) doing business in San Bernardino County and the State of California.

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

23 6. Plaintiff is informed and believes, and thereon alleges, that all Defendants,
24 however designated whether by real or fictitious name, were and are in some manner responsible
25 for the events, happenings, occurrence and instrumentalities upon and about which these claims
26 are made. At all relevant times mentioned herein, Defendants were and are the employers of
27 Plaintiff and all members of the Classes.

28 7. At all times herein mentioned, each of said Defendants participated in the doing

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants, and employees of each and every one of
3 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
4 were acting within the course and scope of said agency and employment. Defendants, and each
5 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
6 omissions complained of herein.

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

12 **GENERAL FACTUAL ALLEGATIONS**

13 9. Defendants are Southern California commercial car dealerships, specializing in the
14 sale and maintenance of automobiles. Plaintiff was employed by Defendants as a non-exempt
15 “Service Advisor” from approximately August 20, 2019, to February 27, 2023. Plaintiff’s job
16 duties included greeting customers, conducting intakes, and diagnosing issues with automobiles.
17 Unless otherwise stated, all allegations contained herein occurred during Plaintiff’s employment
18 with Defendants.

19 10. Defendant required Plaintiff and other non-exempt employees to open up the
20 dealership which required them to unlock doors, turn off the alarm, unlock gates, turn on lights,
21 and turn on the computers before being able to clock in. Moreover, although Plaintiff and other
22 non-exempt employees routinely worked in excess of 40 hours a week, Defendants routinely paid
23 Plaintiff and other non-exempt employees for overtime earned once a month instead of paying
24 overtime during the pay period in which it was earned. As a result, Plaintiff and other non-exempt
25 employees were not paid at least the minimum wage for all hours worked and were not paid for
26 all overtime hours worked. As a result of Defendants’ policies/practices, Defendants failed to
27 compensate Plaintiff and other non-exempt employees for all minimum and overtime wages
28 earned.

1 11. Defendants failed to provide Plaintiff and other non-exempt employees with
2 timely 30-minute meal periods commencing before the end of the fifth hour of work. Specifically,
3 Defendants required Plaintiff and other non-exempt employees to begin working around 6:30
4 a.m. each day. However, Plaintiff was instructed that there was no set meal period and to eat as
5 he worked. In the few instances where he was able to take a meal break, he was regularly
6 interrupted, requiring him to return to work prior to receiving a full 30 full minutes. In addition,
7 Defendants failed to provide a second meal period for shifts exceeding 10 hours. Moreover, for
8 at least a period of time, Defendants also failed to provide Plaintiff and other non-exempt
9 employees with an additional hour of premium pay for each workday in which a meal period
10 violation occurred at their regular rate of pay, as required by Labor Code § 226.7.

11 12. Plaintiff and other non-exempt employees worked shifts in excess of 3.5 hours,
12 and were never provided with a paid rest period for every 4-hour period worked, or major fraction
13 thereof, due to Defendants' unlawful rest period policies/practices. Specifically, Defendants
14 failed to authorize and permit any rest breaks throughout the workday in violation of California
15 law. Defendants also failed to provide Plaintiff and other non-exempt employees with an
16 additional hour of premium pay for each workday in which a rest period violation occurred, as
17 required by Labor Code § 226.7.

18 13. In addition, throughout Plaintiff's employment with Defendants, Defendants
19 failed to properly pay employee's vacation pay at the regular rate of pay. Instead, Defendants paid
20 Plaintiff and other non-exempt employees at an improperly low rate of pay for vacation pay
21 earned, in violation of California law.

22 14. As a result of Defendants' failure to pay all minimum wages, overtime wages, and
23 meal and rest period premium wages owed, Defendants maintained inaccurate payroll records,
24 and issued inaccurate wage statements and failed to pay all final wages to Plaintiff and other non-
25 exempt employees upon their separation of employment.

26 **CLASS ACTION ALLEGATIONS**

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

- 1 a. The Minimum Wage Class consist of all Defendants' current and former non-
2 exempt employees in California who were subject to Defendants' timekeeping
3 policies and/or practices, during the four years immediately preceding the filing of
4 this action through the present.
- 5 b. The Overtime Class consists of all of Defendants' current and former non-exempt
6 employees in California who worked more than eight (8) hours per day and/or
7 forty (40) hours per week and were subject to Defendants' timekeeping
8 policies/practices, during the four years immediately preceding the filing of this
9 action through the present.
- 10 c. The Meal Period Class consists of all Defendants' current and former non-exempt
11 employees in California who worked at least one shift in excess of 5.0 hours
12 without a meal period of at least 30 minutes commencing prior to the end of the
13 fifth hour of work, during the four years immediately preceding the filing of this
14 action through the present.
- 15 d. The Rest Period Class consists of all Defendants' current and former non-exempt
16 employees in California who worked at least one shift in excess of 3.5 hours,
17 during the four years immediately preceding the filing of this action through the
18 present.
- 19 e. The Wage Statement Class consists of all members of the Overtime Class,
20 Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received
21 a wage statement during the one year immediately preceding the filing of this
22 action through the present.
- 23 f. The Waiting Time Class consists of all formerly employed members of the
24 (i) Overtime Class, Minimum Wage Class, Meal Period Class and/or Rest Period
25 Class; and/or (ii) all of Defendants' non-exempt employees who were not paid
26 vacation pay at the correct regular rate of pay, who separated their employment
27 from Defendants during the three years immediately preceding the filing of this
28 action through the present.

1 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes
3 is unknown to Plaintiff at this time; however, it is estimated that the Classes numbers greater than
4 fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of
5 Defendants' employment records.

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

- 10 i. Whether Defendants' timekeeping policies and/or practices resulted in the failure
11 to properly compensate members of the Overtime and Minimum Wage Classes for
12 all hours actually worked;
- 13 ii. Whether Defendants provided all legally compliant meal periods to members of
14 the Meal Period Class;
- 15 iii. Whether Defendants authorized and permitted all legally compliant rest periods to
16 members of the Rest Period Class;
- 17 iv. Whether Defendants provided accurate meal and/or rest period premium payments
18 for non-compliant meal and/or rest periods;
- 19 vi. Whether Defendants furnished legally compliant wage statements to members of
20 the Wage Statement Class; and
- 21 vii. Whether Defendants' policies and/or practices for the timing and amount of
22 payment of final wages to members of the Waiting Time Class at the time of
23 separation from employment were unlawful.

24 18. **Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual members of the Classes. The common
26 questions of law set forth above are numerous and substantial and stem from Defendants' policies
27 and/or practices applicable to each individual class member, such as Defendants' uniform
28 timekeeping policies/practices, and meal and rest period policies/practices. As such, the common

1 questions predominate over individual questions concerning each individual class member's
2 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

3 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
4 Plaintiff, like the members of the Classes, was employed by Defendants in California during the
5 applicable statute of limitations period and was deprived of all minimum wages owed, overtime
6 wages owed, was not provided all legally required meal and rest periods, did not receive accurate,
7 compliant wage statements, and was not paid all final wages owed at the time of separation of
8 employment.

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

15 21. **Superiority:** The California Labor Code is broadly remedial in nature and serves
16 an important public interest in establishing minimum working conditions and standards in
17 California. These laws and labor standards protect the average working employee from
18 exploitation by employers who have the responsibility to follow the laws, and who may seek to
19 take advantage of superior economic and bargaining power in setting onerous terms and
20 conditions of employment. The nature of this action and the format of laws available to Plaintiff
21 and members of the Classes make the class action format a particularly efficient and appropriate
22 procedure to redress the violations alleged herein. If each employee was required to file an
23 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
24 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
25 their vastly superior financial and legal resources. Moreover, requiring each member of the
26 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
27 employees who would be disinclined to file an action against their former and/or current employer
28 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent

1 employment. Further, the prosecution of separate actions by the individual class members, even
2 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
3 with respect to the individual class members against Defendants herein; and which would
4 establish potentially incompatible standards of conduct for Defendants; and/or legal
5 determinations with respect to individual class members which would, as a practical matter, be
6 dispositive of the interest of the other class members not parties to adjudications or which would
7 substantially impair or impede the ability of the class members to protect their interests. Further,
8 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
9 individual prosecution considering all of the concomitant costs and expenses attending thereto.
10 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

11 **FIRST CAUSE OF ACTION**

12 **MINIMUM WAGE VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

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

15 23. Wage Order 4, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
16 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
17 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
18 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
19 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
20 wages and interest accrued thereon.

21 24. At all relevant times herein, Defendants failed to conform their pay practices to
22 the requirements of the law by failing to compensate Plaintiff and members of the Minimum
23 Wage Class for all hours worked including, but not limited to, all hours they were subject to the
24 control of Defendants and/or suffered or permitted to work under the California Labor Code and
25 Wage Order 4.

26 25. California Labor Code § 1198 makes unlawful the employment of an employee
27 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
28 that an employer who has failed to pay its employees the legal minimum wage is liable to pay

1 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
2 amount equal to the wages due and interest thereon.

3 26. As a direct and proximate result of Defendants' unlawful conduct as alleged
4 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
5 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
6 entitled to recover economic and statutory damages and penalties and other appropriate relief as
7 a result of Defendants' violations of the California Labor Code and Wage Order 4.

8 27. The foregoing practices and policies are unlawful and create an entitlement to
9 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
10 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
11 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
12 1194, 1197, and 1198, Wage Order 4, and Code of Civil Procedure § 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

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

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

21 30. At all times relevant herein, Defendants were required to properly compensate
22 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
23 hours worked pursuant to Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an
24 employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay"
25 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
26 workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the
27 employee's regular rate of pay for work in excess of twelve hours each work day and/or for work
28 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants

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

31. The foregoing policies and practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

34. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 4, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Wage Order 4, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

1 37. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
2 of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay
3 rest period premium wages when rest periods were not authorized and permitted.

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

8 **FIFTH CAUSE OF ACTION**
9 **WAGE STATEMENT VIOLATIONS**
10 **(AGAINST ALL DEFENDANTS)**

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

12 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
14 with complete and accurate wage statements that included, among other requirements, all hours
15 worked, all overtime and minimum wages earned, gross wages earned, and net wages earned, in
16 violation of Labor Code § 226 *et seq.*

17 41. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage
18 statements resulted in actual injury, as said failures led to, among other things, the non-payment
19 of all overtime and minimum wages owed, and deprived Plaintiff of the information necessary to
20 identify the discrepancies in Defendants' reported data.

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

25 **SIXTH CAUSE OF ACTION**
26 **WAITING TIME PENALTIES**
27 **(AGAINST ALL DEFENDANTS)**

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

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

7 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed to timely pay Plaintiff and members of the Classes all final wages due to them at the time
9 of their separation including, among other things, underpaid overtime, minimum wages owed,
10 and meal and rest period premiums. Defendants' failure to pay all final wages was willful within
11 the meaning of Labor Code § 203.

12 46. Defendants' failure to timely pay Plaintiff and members of the Classes their earned
13 wages upon separation from employment results in a continued payment of wages up to thirty
14 (30) days from the time the wages were due. Therefore, Plaintiff and members of the Classes are
15 entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs
16 of suit.

17 **SEVENTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

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

21 48. Defendants have engaged and continue to engage in unfair and/or unlawful
22 business practices in California in violation of California Business and Professions Code § 17200
23 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing
24 to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff
25 and the Classes lawful rest periods; failing to furnish accurate and complete itemized wage
26 statements in violation of § 226 *et seq.*; and failing to pay all final wages at the time of separation
27 from employment.

28 49. Defendants' utilization of these unfair and/or unlawful business practices deprived

1 Plaintiff and continues to deprive members of the Classes of compensation to which they are
2 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
3 over Defendants' competitors who have been and/or are currently employing workers and
4 attempting to do so in honest compliance with applicable wage and hour laws.

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

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

11 52. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect Plaintiff's interests and those of the Class, to obtain restitution, to secure injunctive relief
13 on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
14 the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs,
15 which Plaintiff is entitled to recover under Code of Civil Procedure § 1021.5.

16 **EIGHTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

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

20 54. Defendants have committed several Labor Code violations against Plaintiff,
21 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
22 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
23 employees, brings this representative action against Defendants to recover the civil penalties due
24 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
25 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
26 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
27 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
28 failure to pay each employee; (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 the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- c. Failing to provide all meal periods as required by law and failing to pay meal premiums to Plaintiff and similarly 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 similarly aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest premiums at these employees' respective regular rates of pay for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203 and 227.3;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff in violation of Labor Code §§ 558 and 1174.

55. On July 27, 2023, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail 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 violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

56. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former nonexempt employees who worked for Defendants in California at any time between July 27, 2022, and the present.

57. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is entitled to receive 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 payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 558, 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

1 7. Upon the Fourth Cause of Action for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

3 8. Upon the Fifth Cause of Action for statutory wage statement penalties pursuant to
4 Labor Code § 226 *et seq.*;

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

7 10. Upon the Seventh Cause of Action for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of California Business and Professions Code
10 § 17200 *et seq.*;

11 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
12 aggrieved employees, and the State of California according to proof pursuant to Labor
13 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
14 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
15 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
16 employee; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant
17 to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and
18 \$250.00 for each subsequent employee pursuant to Labor Code § 1197.1 per employee per pay
19 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
20 to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation
21 and \$200.00 for each subsequent violation per employee per pay period for those violations of
22 the Labor Code for which no civil penalty is specifically provided, based on the violations of
23 Labor Code sections cited in Paragraph 54 (a)-(h) above;

24 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
25 § 218.6, and Civil Code §§ 3287 and 3289;

26 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
27 §§ 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and
28

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

2
3 Dated: October 2, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

4 By:

5 
Fletcher W. Schmidt
Attorney for Plaintiff

6
7 **DEMAND FOR JURY TRIAL**

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

9
10 Dated: October 2, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

11 By:

12 
Fletcher W. Schmidt
Attorney for Plaintiff