

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

ALEJANDRO ORTEGA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

KEY ENERGY SERVICES, LLC, a Texas
limited liability company; and DOES 1 through
100,

Defendants.

Case No.: BCV-23-102240

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

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (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**

Plaintiff Alejandro Ortega (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendant Key Energy Services, LLC, a Texas limited liability company, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code sections 204, 226 *et seq.*, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code section 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within Kern County. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed

1 by Labor Code §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
2 California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage
3 Order 16, which sets employment standards for the construction, drilling, and mining industry.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of this action and continuing to the present, Defendants did (and
6 continue to do) business within the County of Kern and the State of California by operating a
7 company specializing in oil drilling, and therefore, were (and are) doing business in the County
8 of Kern and the State of California.

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

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

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

27 8. At all times mentioned herein, Defendants, and each of them, were members of
28 and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Defendants operate an oil field in Bakersfield, California. Plaintiff has been
6 employed by Defendants as a non-exempt “Floorhand” from approximately June 2022 until the
7 present. Plaintiff’s primary job duties include performing maintenance on and servicing oil wells.

8 10. During Plaintiff’s employment with Defendants, Defendants failed to compensate
9 Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid
10 minimum wages and additional unpaid overtime wages. Specifically, Plaintiff was required to
11 clock in and out of his shifts, using his unique employee number and fingerprint, at a timeclock
12 located on Defendants’ main yard. Defendants only permitted Plaintiff and other non-exempt
13 employees to clock in when their scheduled shift time began at 5:45 a.m., and clock out at the end
14 of their scheduled shift time, which varied between 4:45 p.m. and 7:45 p.m. Plaintiff and other
15 non-exempt employees, however, arrived at Defendants’ onsite locker room approximately 15
16 minutes early at 5:30 a.m. to don protective gear, including coveralls, boots, safety glasses, and
17 hard hats, and prepare work-related equipment prior to clocking in for their shift, then walk
18 approximately 3 minutes from Defendants’ locker room to the timeclock on the main yard.
19 Similarly, Defendants instructed Plaintiff and other non-exempt employees to clock out of their
20 shifts at the time clock on the main yard, then walk to Defendants’ locker room to remove their
21 protective gear. Defendants’ policy/practice of requiring Plaintiff and other non-exempt
22 employees to don and doff outside of their clock in and clock out time led to an underpayment of
23 minimum and overtime wages. Moreover, Defendants failed to compensate Plaintiff and other
24 non-exempt employees during the time they worked through their meal periods. Specifically,
25 Defendants’ supervisors frequently required Plaintiff and other non-exempt employees to clock
26 in and out of their meal periods on a cellular phone application to reflect timely 30-minute meal
27 periods, even if they were performing their job duties. Defendants then provided Plaintiff and
28 other non-exempt employees with meal periods later in their shifts, which were frequently less

1 than 30 minutes long. As a result, Defendants required Plaintiff and other non-exempt employees
2 to perform work while off-the-clock, and Defendants failed to compensate Plaintiff and other
3 non-exempt employees for all minimum and overtime wages owed.

4 11. Defendants also failed to provide Plaintiff and other non-exempt employees with
5 all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices
6 that failed to provide timely, duty-free 30-minute meal periods before the fifth hour of work or
7 **any** second meal periods when they worked shifts over 10.0 hours. As stated, Defendants'
8 supervisors required Plaintiff and other non-exempt employees to clock out for their meal periods
9 on a cellular phone application at 10:30 a.m., before the end of their fifth hour of work, in order
10 to reflect timely meal periods on their timecards. Instead, Defendants' supervisors required that
11 Plaintiff and other non-exempt employees continue to work through their meal periods, while
12 clocked-out, and only provided meal periods later in the day that were often less than 30 minutes
13 long. In the event Plaintiff and other non-exempt employees did not clock out for their meal
14 periods at 10:30 a.m., Defendants' supervisors modified their time records to reflect timely, 30-
15 minute meal periods. As a result of Defendants' policies and practices, Plaintiff and other non-
16 exempt employees frequently took untimely and/or short meal periods or missed their meal
17 periods altogether. Moreover, Defendants frequently interrupted Plaintiff and other non-exempt
18 employees during their purported meal periods. As a result, Defendants failed to provide duty-
19 free meal periods. On occasions when Plaintiff and other non-exempt employees were not
20 provided with all lawful meal periods to which they were entitled, Defendants failed to pay
21 Plaintiff and other non-exempt employees an additional hour of premium pay at their respective
22 regular rates of pay for each workday in which a meal period violation occurred, as required by
23 Labor Code section 226.7. Upon information and belief, Defendants failed to maintain pay codes
24 for the payment of meal period premium payments as required by Labor Code section 226.7.

25 12. Defendants failed to authorize and permit Plaintiff and other non-exempt
26 employees to take **any** duty-free 10-minute rest periods for every four hours worked, or major
27 fraction thereof, due to Defendants' unlawful rest period policies/practices. Defendant failed to
28 authorize and permit Plaintiff and other non-exempt employees to take any rest periods

1 whatsoever. Furthermore, Defendants failed to compensate Plaintiff and other non-exempt
2 employees with an additional hour of premium pay at their respective regular rates of pay for each
3 workday in which a rest period violation occurred, as required by Labor Code § 226.7.

4 13. As stated above, Defendants required Plaintiff and other non-exempt employees
5 to download a timekeeping system onto their cellular phone to clock in and out of their meal
6 periods. Despite requiring Plaintiff and other non-exempt employees to utilize their personal
7 cellular phones for work purposes, Defendants failed to reimburse these non-exempt employees
8 for all necessary business expenses associated with using their personal cell phones, in violation
9 of Labor Code § 2802. Upon information and belief, Defendants failed to maintain any policy for
10 reimbursing employees for work-related expenses.

11 14. As a result of Defendants' failure to pay all overtime wages, minimum wages, and
12 meal and rest period premium wages owed, Defendants also maintained inaccurate payroll
13 records and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

14 **CLASS ACTION ALLEGATIONS**

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

- 17 a. The Overtime Class consists of consists of all Defendants' current and former non-
18 exempt employees in California who worked more than 8.0 hours per day and/or
19 40.0 hours per workweek and were subject to Defendants' timekeeping policies
20 and/or practices for non-exempt employees, during the four years immediately
21 preceding the filing of this action through the present.
- 22 b. The Minimum Wage Class consists of all of Defendants' current and former non-
23 exempt employees in California who were subject to Defendants' timekeeping
24 policies and/or practices for non-exempt employees, during the four years
25 immediately preceding the filing of this action through the present.
- 26 c. The Meal Period Class consists of all Defendants' current and former non-exempt
27 employees in California who worked at least one shift in excess of 5.0 hours during
28 the four years immediately preceding the filing of this action through the present.

- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.
- e. The Reimbursement Class consists of all Defendants' current and former non-exempt employees in California who were required to use a personal cellular phone for work-related purposes without reimbursement, during the four years immediately preceding the filing of this action through the present.
- f. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants, during the one year immediately preceding the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, sections 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;

- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime Class and/or Minimum Wage Class;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- v. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- vi. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code section 226.7;
- vii. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code sections 2802 and 2804; and
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226.

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

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum wages owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages at his regular rate

of pay for missed or non-compliant meal and rest periods, was not reimbursed for all necessary business expenses, and was not provided with accurate, itemized wage statements.

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

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified herein are maintainable as a Class under section 382 of the Code
5 of Civil Procedure.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

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

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

14 24. At all times relevant herein, Defendants were required to properly pay Plaintiff
15 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
16 Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee
17 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
18 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage
19 Order 16, § 3 also requires an employer to pay an employee double the employee’s regular rate
20 of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on
21 the seventh consecutive day of work in the workweek.

22 25. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
23 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
24 Class at one and one-half times their regular rate of pay for such hours. Defendants also caused
25 Plaintiff and the members of the Overtime Class to work in excess of twelve hours in a workday
26 but did not properly compensate Plaintiff and the members of the Overtime Class at double their
27 regular rate of pay for all such hours.

28 ///

1 26. The foregoing policies and practices are unlawful and create entitlement to
2 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
3 premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and
4 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
5 16, and Code of Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **MINIMUM WAGE VIOLATIONS**

8 **(AGAINST ALL DEFENDANTS)**

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

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

16 29. At all relevant times herein, Defendants failed to conform their pay practices to
17 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
18 for all hours worked including, but not limited to, all hours they were subject to the control of
19 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
20 Order 16.

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

26 31. As a direct and proximate result of Defendants' unlawful conduct as alleged
27 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
28 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are

1 entitled to recover economic and statutory damages and penalties and other appropriate relief as
2 a result of Defendants' violations of the California Labor Code and Wage Order 16.

3 32. The foregoing practices and policies are unlawful and create an entitlement to
4 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
5 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
6 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
7 1194, 1197, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

8 **THIRD CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

12 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 failed in their affirmative obligation to provide all of their non-exempt employees in California,
14 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
15 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10, for the
16 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
17 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
18 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
19 California Labor Code §§ 226.7 and 512.

20 35. As a result, Defendants are responsible for paying premium compensation for meal
21 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
22 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Code of Civil Procedure §
23 1021.5.

24 **FOURTH CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

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

28 ///

1 37. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of
2 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
3 period worked, or major fraction thereof.

4 38. As alleged herein, and due to Defendants' unlawful rest period policies and/or
5 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
6 Class to take all paid rest periods to which they were legally entitled. Despite Defendants'
7 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
8 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
9 California Labor Code § 226.7.

10 39. The foregoing violations create an entitlement to recovery by Plaintiff and
11 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
12 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
13 to Labor Code §§ 226.7, 516, and 558, Wage Order 16, and Code of Civil Procedure § 1021.5.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

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

18 41. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
19 states that "an employer shall indemnify his or her employees for all necessary expenditures or
20 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
21 his or her obedience to the directions of the employer."

22 42. At all times relevant herein, Defendants were subject to Labor Code § 2804, which
23 states that "any contract or agreement, express or implied, made by any employee to waive the
24 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
25 employee or his personal representative of any right or remedy to which he is entitled under the
26 laws of this State."

27 43. As alleged herein, due to Defendants' unlawful reimbursement practices,
28 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all

necessary business expenses incurred, including, among other things, personal cellular phone usage.

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

46. 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 wage statements that complied with the requirements of Labor Code § 226(a).

47. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with compliant wage statements resulted in actual injury, as said failures rendered Plaintiffs unable to unable to readily ascertain the information on their wage statements.

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

50. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum

1 wages owed; failing to pay all required meal and rest period premium wages owed; failing to
2 reimburse for all necessary business expenses incurred; and knowingly failing to furnish complete
3 and accurate, itemized wage statements.

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

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

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

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

20 **EIGHTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(AGAINST ALL DEFENDANTS)**

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

24 56. Defendants have committed several Labor Code violations against Plaintiff,
25 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
26 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
27 employees, brings this representative action against Defendants to recover the civil penalties due
28 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California

1 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
2 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
3 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
4 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
5 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
6 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
7 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
8 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
9 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
10 subsequent violation per employee per pay period for those violations of the Labor Code for which
11 no civil penalty is specifically provided, based on the following Labor Code violations:

- 12 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
13 earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- 14 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
15 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
16 and 1197;
- 17 c. Failing to provide meal periods as required by law and failing to pay meal period
18 premiums to Plaintiff and other aggrieved employees at these employees'
19 respective regular rates of compensation for meal period violations in violation of
20 Labor Code §§ 226.7, 512, and 558;
- 21 d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all
22 lawful rest periods to which they are entitled, and failing to pay rest premiums to
23 Plaintiff and other aggrieved employees at these employees' respective regular
24 rates of compensation for rest period violations in violation of Labor Code §§
25 226.7, 516, and 558;
- 26 e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related
27 expenses incurred in violation of Labor Code §§ 2802 and 2804;
- 28 f. Failing to furnish Plaintiff and other aggrieved employees with accurate and

compliant itemized wage statements in violation of Labor Code § 226;

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 and aggrieved employees in violation of Labor Code §§ 558 and 1174.

57. On July 12, 2023, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to 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.

58. 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 12, 2022, and the present.

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

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;

1 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
3 1194.2 and 1197;

4 6. Upon the Third Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;

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

8 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code sections 2802 and 2804;

10 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226 *et. seq.*;

12 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
13 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
14 practices declared by this Court to be in violation of California Business and Professions Code §
15 17200 *et seq.*;

16 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
17 aggrieved employees, and the State of California according to proof pursuant to Labor
18 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
19 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
20 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
21 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
22 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
23 (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor
24 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
25 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
26 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
27 employee per pay period for those violations of the Labor Code for which no civil penalty is
28

specifically provided, based on the violations of Labor Code sections cited in Paragraph 56 (a)-(h) above;

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

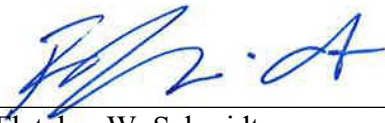
13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, 2802, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: September 18, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff

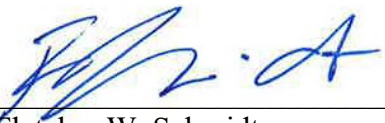
DEMAND FOR JURY TRIAL

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

Dated: September 18, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff