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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

EDGAR ALGARIN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FLEETGENIUS, LLC, a Florida limited
liability company; and DOES 1 through 100,

Defendants.

Case No.: 30-2023-01344927-CU-OE-CXC

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

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 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.*);**

1 (7) **WAITING TIME PENALTIES**
2 **(LABOR CODE §§ 201-203);**
3 (8) **UNFAIR COMPETITION (BUS &**
4 **PROF CODE § 17200 *et seq.*); and**
5 (9) **CIVIL PENALTIES UNDER THE**
6 **PRIVATE ATTORNEYS GENERAL**
7 **ACT (LABOR CODE §§ 2698, *et seq.*).**
8 **DEMAND FOR JURY TRIAL**
9 **UNLIMITED CIVIL CASE**

10 Plaintiff Edgar Algarin (“Plaintiff”) on behalf of himself and all others similarly situated,
11 hereby brings this First Amended Class and Representative Action Complaint against Defendant
12 FleetGenius, LLC, a Florida limited liability company, and DOES 1 to 100, inclusive
13 (collectively “Defendants”), and on information and belief alleges as follows:

14 **JURISDICTION**

15 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
16 action for recovery of unpaid wages and penalties under California Labor Code sections 201-
17 204, 226 *et seq.*, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802 2804, and 2698
18 *et seq.*, California Business and Professions Code section 17200 *et. seq.*, and Industrial Welfare
19 Commission Wage Order 9 (“Wage Order 9”), in addition to seeking declaratory relief and
20 restitution. This action is brought pursuant to California Code of Civil Procedure section 382.
21 This Court has jurisdiction over Defendants’ violations of the California Labor Code because
22 the amount in controversy exceeds this Court's jurisdictional minimum.

23 **VENUE**

24 2. Venue is proper in this judicial district pursuant to California Code of Civil
25 Procedure sections 395(a) and 395.5, as at least some of the acts and omissions complained of
26 herein occurred in the County of Orange. Defendants transact business within the County of
27 Orange and/or otherwise are found within the County of Orange, and Defendants are within the
28 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,

1 Plaintiff was and currently is, a California resident living within Orange County. During the four
2 years immediately preceding the filing of this action and within the statute of limitations periods
3 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
4 exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
5 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
6 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
7 1198, California Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law"),
8 and Wage Order 9, which sets employment standards for the transportation and garbage
9 collection industries.

10 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
11 years preceding the filing of this action and continuing to the present, Defendants did (and
12 continue to do) business within the County of Orange and the State of California by operating a
13 company specializing in garbage can replacement and disposal, and therefore, were (and
14 are) doing business in the County of Orange 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 to 100, inclusive, 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, partners, 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 based thereon alleges, that at all times
24 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
25 Classes.

26 7. At all times herein mentioned, each of said Defendants participated in the doing
27 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
28 Defendants, and each of them, were the agents, servants, and employees of each and every one

1 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
2 were acting within the course and scope of said agency and employment. Defendants, and each
3 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
4 omissions complained of herein.

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

10 **GENERAL FACTUAL ALLEGATIONS**

11 9. Defendants operate a company specializing in replacing residential garbage cans.
12 Plaintiff was employed by Defendants as a non-exempt "Delivery Driver" from approximately
13 November 2020 until approximately October 2022. Defendants assigned Plaintiff routes in
14 Riverside County, including Banning, Beaumont, Moreno Valley, Temecula, Hemet, and
15 Menifee. Plaintiff's primary job duties included driving to residential homes to replace trash cans
16 and disposing of the defective trash cans at Defendants' Moreno Valley yard. Plaintiff was
17 routinely assigned to travel to approximately 100 to 160 homes during shifts approximately 8 to
18 10 hours long.

19 10. During Plaintiff's employment with Defendants, Plaintiff worked in excess of 8
20 hours per workday and/or more than 40 hours per workweek but did not receive overtime
21 compensation equal to one and one-half times his regular rate of pay for working overtime hours.
22 Specifically, Defendants paid Plaintiff and other non-exempt employees non-discretionary
23 incentive pay and/or other forms of pay that are not excludable from an employee's "regular
24 rate" of compensation including but not limited to bonuses and payments denoted as "Bonus"
25 and "EPSLCovid" (hereinafter referred to collectively as "Incentive Pay"). As a result of paying
26 Plaintiff and other non-exempt employees Incentive Pay, Defendants failed to properly calculate
27 the regular rate of pay, resulting in unpaid overtime wages.

28 11. During Plaintiff's employment with Defendants, Defendants failed to compensate

1 Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid
2 minimum wages and additional unpaid overtime wages. Specifically, Defendants maintained a
3 policy to not allow Plaintiff and other non-exempt employees to clock-in prior to their scheduled
4 shift time of 5:00 a.m., even on occasions when Plaintiff and other non-exempt employees began
5 work prior to 5:00 a.m. Defendants also failed to compensate Plaintiff and other non-exempt
6 employees during the time they worked through their meal periods. Due to their work demands,
7 Plaintiff and other non-exempt employees frequently worked through their meal periods.
8 Specifically, Defendants' managers frequently interrupted Plaintiff during his meal periods with
9 work-related calls. As a result, Defendants required Plaintiff and other non-exempt employees
10 to perform work while off-the-clock, and Defendants failed to compensate Plaintiff and other
11 non-exempt employees for all minimum and overtime wages owed. Moreover, Defendants
12 required that Plaintiff download cellular phone applications, initially "Heartland" and later
13 "Paycor," to clock-in and out, which recorded Plaintiff's clock-in and clock-out times to the
14 minute. Defendants, however, maintained timekeeping policies and practices that rounded and/or
15 time-shaved Plaintiff's hours, which resulted in Plaintiff not being compensated for all hours
16 actually worked. Due to Defendants' timekeeping policies and practices that fail to compensate
17 for all hours worked, Plaintiff and other non-exempt employees were deprived of all required
18 minimum wages. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 654 ("[I]f
19 an employer, as in this case, can capture and has captured the exact amount of time an employee
20 has worked during a shift, the employer must pay the employee for "all the time" worked.").
21 Further, on occasions when Plaintiff worked over eight hours in a day and/or forty hours in a
22 workweek, this process of time-shaving or rounding also deprived him of all overtime wages
23 owed.

24 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
25 all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices
26 that failed to provide timely, duty-free 30-minute first meal periods commencing before the end
27 of the fifth hour of work and **any** second duty-free, 30-minute meal periods when they worked
28 shifts in excess of 10.0 hours. Specifically, Defendants automatically deducted 30 minutes from

1 Plaintiff's hours, from 10:00 a.m. to 10:30 a.m., without verifying if Plaintiff received an
2 uninterrupted and timely 30-minute meal period. Assuming that Defendants' timecards are
3 accurate, they show that Plaintiff was routinely provided with untimely meal periods, after his
4 fifth hour of work. Moreover, due to Plaintiff's workload and the numerous cities he had to drive
5 to during his shifts, Plaintiff worked through his meal periods to complete his job duties.
6 Defendants' managers frequently called Plaintiff throughout his shift to inform him that he was
7 behind on his routes, including during his purported meal periods. As a result, Defendants failed
8 to provide 30-minute, uninterrupted, duty-free meal periods. On occasions when Plaintiff and
9 other non-exempt employees were not provided with all lawful meal periods to which they were
10 entitled, Defendants failed to pay Plaintiff and other non-exempt employees an additional hour
11 of premium pay at their respective regular rates of pay for each workday in which a meal period
12 violation occurred, as required by Labor Code § 226.7. Upon information and belief, Defendants
13 failed to maintain pay codes for the payment of meal period premium payments as required by
14 Labor Code § 226.7.

15 13. Further, Defendants regularly failed to authorize and permit Plaintiff and other
16 non-exempt employees to take *any* duty-free 10-minute rest periods for every four hours worked,
17 or major fraction thereof, due to Defendants' unlawful rest period policies/practices. As
18 mentioned, Plaintiff frequently worked through his rest periods to complete his workload and
19 Defendants frequently interrupted Plaintiff and other non-exempt employees during rest periods
20 with work-related calls. On occasions when Plaintiff and other non-exempt employees were not
21 provided with all lawful rest periods to which they were entitled, Defendants failed to pay
22 Plaintiff and other non-exempt employees an additional hour of premium pay at their respective
23 regular rates of pay for each workday in which a rest period violation occurred, as required by
24 Labor Code § 226.7. Upon information and belief, Defendants failed to maintain pay codes for
25 the payment of rest period premium payments as required by Labor Code § 226.7.

26 14. Additionally, Defendants required Plaintiff and other non-exempt employees to
27 use their personal cellular phones to clock-in and out of their shifts and meal periods. Even
28 though Defendants provided a company phone, Defendants required that Plaintiff and other non-

exempt employees download the “Heartland” and “Paycor” applications on their personal cellular phones to clock-in and out of their shifts. As mentioned, Defendants’ managers also communicated with Plaintiff on his personal cellular phone throughout the day regarding his work duties. Despite requiring Plaintiff and other non-exempt employees to utilize their personal cellular phones for work purposes, Defendants failed to reimburse these non-exempt employees for all necessary business expenses associated with using their personal cell phones, in violation of Labor Code § 2802. Upon information and belief, Defendants failed to maintain any policy for reimbursing employees for work-related expenses.

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

16. Defendants violated Labor Code §§ 201-203 by failing to pay Plaintiff his final wages immediately upon his termination. Moreover, as a result of Defendants’ failure to pay all overtime wages, minimum wages, sick pay wages, and meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees, and failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their respective separations of employment. Further, Defendants’ wage statements are also facially deficient due to their failure to include the number of hours applicable to Incentive Pay and their failure to include the amount of hours accrued in sick pay, in violation of Labor Code §§ 226(a) and 246(i).

CLASS ACTION ALLEGATIONS

17. **Class Definitions:** Plaintiff brings 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 Defendants’ current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0

hours per workweek and: (i) received Incentive Pay during a corresponding time period; and/or (ii) were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

e. The Reimbursement Class consists of all 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: (i) all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who received a wage statement from Defendants; and/or (ii) all of Defendants' current and former non-exempt employees in California who received a wage statement that failed to include the number of hours applicable to Incentive Pay; and/or (iii) all of Defendants' current and former non-exempt employees in California who received a wage statement that failed to list all accrued sick pay, during the one year immediately preceding the filing of this action through the present.

g. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, and/or any individual who was not paid all his or her sick pay wages who separated their employment with Defendants during the three years immediately preceding 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 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 five-hundred (500) individuals. The identity of such membership is readily ascertainable via inspection of 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 non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants lawfully paid premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- vi. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and

2804;

vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

viii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

20. **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 overtime and minimum wage 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.

21. **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 did not receive accurate wage statements or all final wages owed at the time of his separation from employment.

22. **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.

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 26. At all times relevant herein, Defendants were required to properly pay Plaintiff
10 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
11 Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an employee
12 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
13 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek.

14 27. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
15 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
16 Class at one and one-half times their regular rate of pay for such hours.

17 28. The foregoing policies and practices are unlawful and create entitlement to
18 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
19 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
20 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
21 9, and Code of Civil Procedure § 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **MINIMUM WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 30. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
27 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
28 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal

1 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
2 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
3 wages and interest accrued thereon.

4 31. At all relevant times herein, Defendants failed to conform their pay practices to
5 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
6 for all hours worked including, but not limited to, all hours they were subject to the control of
7 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
8 Order 9.

9 32. California Labor Code § 1198 makes unlawful the employment of an employee
10 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and
11 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage
12 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated
13 damages in an amount equal to the wages due and interest thereon.

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

19 34. The foregoing practices and policies are unlawful and create an entitlement to
20 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the
21 unpaid amount of minimum wages owing, including interest thereon, liquidated damages,
22 statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code
23 §§ 204, 558, 1194, 1197, and 1198, Wage Order 9, and Code of Civil Procedure § 1021.5.

24 **THIRD CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

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

28 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed in their affirmative obligation to provide all of their non-exempt employees in California,
2 including Plaintiff and members of the Meal Period Class, with all legally compliant meal
3 periods in accordance with the mandates of the California Labor Code and Wage Order 9, § 10,
4 for the reasons set forth in the factual allegations and class definitions sections of this Complaint.
5 Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to
6 Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in
7 accordance with California Labor Code §§ 226.7 and 512.

8 37. As a result, Defendants are responsible for paying premium compensation for
9 meal period violations, including interest thereon, statutory penalties, civil penalties, and costs
10 of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Code of Civil
11 Procedure § 1021.5.

12 **FOURTH CAUSE OF ACTION**
13 **REST PERIOD VIOLATIONS**
14 **(AGAINST ALL DEFENDANTS)**

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

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

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

25 41. The foregoing violations create an entitlement to recovery by Plaintiff and
26 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
27 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
28 to Labor Code §§ 226.7, 516, and 558, Wage Order 9, and Code of Civil Procedure § 1021.5.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

14 45. As alleged herein, due to Defendants’ unlawful reimbursement practices,
15 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
16 necessary business expenses incurred, including, among other things, personal cellular phone
17 usage.

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

22 **SIXTH CAUSE OF ACTION**

23 **WAGE STATEMENT VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
28 and members of the Wage Statement Class with complete and accurate wage statements that

1 included, among other requirements, all hours worked, all overtime and minimum wages earned,
2 total gross wages earned, all rates of pay, total net wages earned, failure to include the number
3 of hours as applicable to Incentive Pay, and all sick pay accrued, in violation of Labor Code
4 § 226 *et seq.*

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES**

16 **(AGAINST ALL DEFENDANTS)**

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

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

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

1 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
2 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
3 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

9 **EIGHTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

1 and 17208.

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

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

9 **NINTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS)**

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

13 62. Defendants have committed several Labor Code violations against Plaintiff,
14 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
15 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
16 employees, brings this representative action against Defendants to recover the civil penalties due
17 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
18 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not
19 limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200
20 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210
21 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each
22 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00
23 for each initial violation and \$250.00 for each subsequent violation 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 following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
 - b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
 - c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
 - d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
 - e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
 - f. Failing to 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 sick time pay at their regular rate of compensation in violation of Labor Code § 246;
 - h. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
 - i. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174 by; and
 - j. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month.
63. On August 28, 2023, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail of Defendants'

1 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
2 under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor
3 Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants
4 of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim
5 under the Private Attorneys General Act with respect to these violations.

6 64. Based on the foregoing, Plaintiff seeks to represent himself and all other
7 Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants'
8 current and former nonexempt employees who worked for Defendants in California at any time
9 between August 28, 2022, and the present.

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

14 **PRAYER**

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

- 17 1. For an order certifying the proposed Classes;
- 18 2. For an order appointing Plaintiff as representative of the Classes;
- 19 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 20 4. Upon the First Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 22 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
23 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
24 1194.2 and 1197;
- 25 6. Upon the Third Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 27 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

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

3 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code
4 § 226 *et seq.*;

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

7 11. Upon the Eighth 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
9 or practices declared by this Court to be in violation of California Business and Professions Code
10 § 17200 *et seq.*;

11 12. Upon the Ninth 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
17 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
18 and \$250.00 for each subsequent employee pursuant to Labor Code § 1197.1 per employee per
19 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
20 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
21 violation and \$200.00 for each subsequent violation per employee per pay period for those
22 violations of the Labor Code for which no civil penalty is specifically provided, based on the
23 violations of Labor Code sections cited in Paragraph 62 (a)-(j) above;

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

26 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
27 §§ 218.5, 1194 *et seq.*, 226 and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

28 ///

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

2
3 Dated: November 2, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

4 By: 

5 Fletcher W. Schmidt
6 Attorneys for Plaintiff

7 **DEMAND FOR JURY TRIAL**

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

9 Dated: November 2, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

10 By: 

11 Fletcher W. Schmidt
12 Attorneys for Plaintiff