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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICHARD SOTO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

APPLIED BIOCODE, INC., a California
corporation; and DOES 1 through 100,
inclusive

Defendants.

Case No.: 23STCV20199

**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 EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200); and**

**(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (Labor Code §§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Richard Soto ("Plaintiff"), on behalf of himself and all others similarly situated, hereby brings this First Amended and Representative Class Action Complaint ("Complaint") against Defendants Applied Biocode, Inc., a California corporation; 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, penalties, and unreimbursed expenses under California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law"), and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"), in addition to seeking declaratory relief, injunctive relief, and restitution. This class action is brought pursuant to California Code of Civil Procedure § 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 jurisdictional district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as Defendant's principal place of business is located in the County of Los Angeles. Defendants own, maintain offices, transact business, have an agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles County, and Defendant are within the jurisdiction of this Court for purpose 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. During the four years immediately preceding the filing of this lawsuit and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as an hourly 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 to him by California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code § 17200 and Wage Order 1, which sets employment standards for the manufacturing industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this Complaint and continuing to the present, Defendants did (and do) business as a developer and manufacturer of scientific and medical testing and diagnostic products, and employed Plaintiff and other, similarly situated non-exempt employees within Los Angeles County and the state of California, and, therefore, were (and are) doing business in Los Angeles County and the State of California.

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

6. Plaintiff is informed and believes, and thereon alleges, that all Defendants, however designated whether by real or fictitious name, were and are in some manner responsible for the events, happenings, occurrence and instrumentalities upon and about which this action is made. At all relevant times mentioned herein, Defendants were and are the employers of Plaintiff and all similarly situated employees.

7. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein, whether designated by real or fictitious name, are, and at all times relevant hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as well as the agents of all Defendants, and in doing things and acts herein alleged and complained

of or in failing to do that which they should have done, were acting within the scope of employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions alleged herein.

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

GENERAL FACTUAL ALLEGATIONS

9. Defendants develop and manufacture various scientific and medical testing and diagnostic products, including COVID test kits and other medical testing devices. Plaintiff was employed by Defendants as a Receiving Clerk from approximately September 2020 to June 2023. Plaintiff's job duties included receiving incoming products, verifying and logging inventory, and dispersing products.

10. Defendants utilized a timekeeping system, which upon information and belief, resulted in Plaintiff not being compensated for all hours actually worked. Specifically, in order to clock in for a shift, Plaintiff and other non-exempt employees needed to first boot up a computer terminal, navigate to the correct screen, and input multiple passwords before being able to clock in for the shift. Similarly, at the end of a shift, after clocking out, Plaintiff and other non-exempt employees would still be required to shut down the computer system, close and lock doors, and on occasions, receive after-hours shipments from FedEx. As a result of Defendants' timekeeping policies/practices, employees consistently performed compensable work off-the-clock for which they were not compensated, resulting in unpaid minimum and overtime wages.

11. Defendants failed to provide Plaintiff and other non-exempt employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute meal periods, including second meal periods when working shifts over 10.0 hours. In addition, Defendants at times interrupted Plaintiff and other non-exempt employees during their purported meal periods with work-related phone calls. On

occasions when Plaintiff and other non-exempt employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Plaintiff and other non-exempt employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code section 226.7. Upon information and belief, Defendants failed to maintain pay codes for the payment of meal period premium payments as required by Labor Code section 226.7.

12. Plaintiff was not authorized and permitted to take a rest period for every 4 hours worked (or major fraction thereof) due to Defendants' rest period policies/practices. Specifically, Plaintiff and other non-exempt employees were frequently denied rest periods either due to pressure from supervisors to skip the rest periods, or due to overwhelming work demands. Defendant also failed to provide Plaintiff and other non-exempt employees with an additional hour of premium pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

13. Defendants would frequently call Plaintiff and other non-exempt employees on their personal cellular phones with work-related questions or updates. Despite requiring Plaintiff and other non-exempt employees to use their personal cellular phones for work purposes, Defendants did not reimburse Plaintiff and other non-exempt employees for any portion of their cellular phone bill, in violation of Labor Code § 2802.

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

CLASS ACTION ALLEGATIONS

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

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week were subject to Defendants' timekeeping

1 policies/practices, during the four years immediately preceding the filing of the
2 lawsuit through the present.

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

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

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

14 e. The Reimbursement Class: all of Defendants' current and former non-exempt
15 employees in California who were subject to Defendants' reimbursement
16 policies/practices, during the four years immediately preceding the filing of the
17 lawsuit through the present.

18 f. The Wage Statement Class consists of all members of the (i) Overtime Class; (ii)
19 Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, who
20 received a wage statement from Defendants during the one year immediately
21 preceding the filing of the lawsuit through the present.

22 g. The Waiting Time Class consists of all members of the (i) Overtime Class; (ii)
23 Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, who
24 separated their employment from Defendants during the three years immediately
25 preceding the filing of the lawsuit through the present.

26 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
27 joinder of all members would be unfeasible and not practicable. The membership of the Classes
28 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes

number greater than fifty (50) individuals as to each Class. 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 employees, which predominate over questions affecting only individual employees including, without limitation:

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants provided meal and rest period premium payments for non-complaint meal and rest periods;
- v. Whether Defendants failed to properly reimburse the members of the Reimbursement Class for all necessary business expenses incurred;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class; and
- vii. Whether Defendants' policies and/or practices for the timing and payment of final wages to members of the Waiting Time Class were unlawful.

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 timekeeping, meal period, rest period, and reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

1 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
2 Defendants employed Plaintiff as a non-exempt employee in California during the statute of
3 limitations periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like
4 the members of the Classes was deprived of all overtime and minimum wages, was not provided
5 all legally required meal and rest breaks, was not reimbursed for necessary business expenditures,
6 was furnished with inaccurate and incomplete wage statements, and was not paid all final wages
7 upon his separation of employment.

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

14 21. The California Labor Code is broadly remedial in nature and serves an important
15 public interest in establishing minimum working conditions and standards in California. These
16 laws and labor standards protect the average working employee from exploitation by employers
17 who have the responsibility to follow the laws, and who may seek to take advantage of superior
18 economic and bargaining power in setting onerous terms and conditions of employment. The
19 nature of this action and the format of laws available to Plaintiff and members of the Classes make
20 the class action format a particularly efficient and appropriate procedure to redress the violations
21 alleged herein. If each employee was required to file an individual lawsuit, Defendants would
22 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm
23 the limited resources of each individual plaintiff with their vastly superior financial and legal
24 resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy
25 would also discourage the assertion of lawful claims by employees who would be disinclined to
26 file an action against their former and/or current employer for real and justifiable fear of retaliation
27 and permanent damages to their careers at subsequent employment. Further, the prosecution of
28 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 (as defined herein) are maintainable under § 382 of the Code of Civil Procedure. As such, each of the Classes (as defined herein) are maintainable under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

24. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per workday and/or in excess of 40 hours 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.

25. 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.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

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

27. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

28. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to compensate Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

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

30. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 1.

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31. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 1194, 1197, and 1198, Wage Order 1, 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 1, § 10, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

34. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Wage Order 1, § 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.

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

38. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289 and Wage Order 1.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES

(AGAINST ALL DEFENDANTS)

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

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

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

42. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 1 § 9, Plaintiff and members of the Reimbursement Class were damaged in sums, which will be shown according to proof.

43. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate

as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the date on which Plaintiff incurred the necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all minimum and overtime wages owed, and all rest period premium wages earned, all in violation of Labor Code § 226.

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

47. 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

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

49. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of

1 his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon
2 said employee's last date of employment.

3 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
5 at the time of their separation including, among other things unpaid overtime and minimum wages
6 as well as unpaid rest period premium wages. Further, Plaintiff is informed and believes, and
7 based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail
8 to pay members of the Waiting Time Class all earned wages at the end of employment in a timely
9 manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all
10 final wages was willful within the meaning of Labor Code § 203.

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

16 **EIGHTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(AGAINST ALL DEFENDANTS)**

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

20 53. Defendants have engaged and continue to engage in unfair and/or unlawful
21 business practices in California in violation of California Business and Professions Code § 17200
22 et seq., by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing
23 to authorize and permit Plaintiff and the Classes lawful rest periods; and failing to reimburse
24 Plaintiff and the Classes for all necessary business expenses.

25 54. Defendants' utilization of these unfair and/or unlawful business practices deprived
26 Plaintiff and continues to deprive members of the Classes of compensation to which they are
27 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
28

over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

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

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

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

NINTHN CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT (AGAINST ALL DEFENDANTS)

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

59. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to 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 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 all meal periods as required by law and failing to pay meal period 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 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 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, 202 and 203;
- g. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

60. On August 23, 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.

61. 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’ employees who worked for Defendants in California at any time between August 23, 2022, and the present.

62. 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 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 Plaintiff’s counsel as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197;
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 compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

5 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226 *et seq.*;

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

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

13 12. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor
15 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
16 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
17 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
18 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
19 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay
20 period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant
21 to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and
22 \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay
23 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation
24 per employee per pay period for those violations of the Labor Code for which no civil penalty is
25 specifically provided, based on the violations of Labor Code sections cited in Paragraph 59 (a)-
26 (h) above;

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

1 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
2 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

4
5 Dated: October 30, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

8
9 **DEMAND FOR JURY TRIAL**

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

11
12 Dated: October 30, 2023

HAINES LAW GROUP, APC

13
14 By:


Fletcher W. Schmidt
Attorneys for Plaintiff