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on behalf of herself and similarly situated employees

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Superior Court of California,
County of Placer
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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER**

WILLIAM MUSTAIN, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SIERRA STRIPING, INC.; RICHARD
WAYNE JOHNSON, an individual, and
Does 1 through 20, inclusive,

Defendants.

Case No. S-CV-0052071

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*
2. Failure to Provide Accurate Wage Statements;
3. Failure to Pay Minimum Wage for All Hours Worked;
4. Failure to Provide Meal and Rest Periods;
5. Waiting Time Penalties;
6. Failure to Pay Overtime Wages;
7. Failure to Reimburse Business Expenses;
8. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff WILLIAM MUSTAIN (“Plaintiff”), on behalf of herself and all other similarly
2 situated employees hereby files this First Amended Complaint against Defendants SIERRA
3 STRIPING, INC.; RICHARD WAYNE JOHNSON, an individual; and Does 1 through 20
4 (collectively referred to as “Defendants”). Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action brought by Plaintiff seeking damages for failure to provide meal
7 and rest periods, failure to pay overtime and minimum wages, inaccurate wage statements, failure to
8 reimburse for business expenses, waiting time penalties, and derivative civil and statutory penalties.
9 Plaintiff seeks these damages and penalties, plus interest and attorney’s fees, on behalf of herself and
10 similarly situated employees.

11 2. During all relevant times, Plaintiff and similarly situated employees worked for
12 Defendants as non-exempt, hourly employees. Defendants issued wage statements to Plaintiff and
13 similarly situated employees that did not comply with California law because, among other things,
14 they did not include all hours worked, and the correct rates of pay. As a matter of policy and
15 practice, Defendants failed to provide Plaintiff and similarly situated employees meal and rest
16 periods, which is in violation of the California Labor Code.

17 **JURISDICTION AND VENUE**

18 3. The Placer County Superior Court has jurisdiction in this matter due to alleged
19 violations of California Labor Code §§ 226, 226.3, 213, 2698 *et seq.*, Business and Professions Code
20 § 17200 *et seq.*

21 4. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
22 of the wrongful acts and violations of law asserted herein occurred within Placer County.

23 **PARTIES**

24 5. Plaintiff WILLIAM MUSTAIN is over the age of eighteen (18) and is a resident of
25 the State of California and a former employee of Defendants.

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant SIERRA
27 STRIPING, INC. is now and/or at all times mentioned in this Complaint a California Corporation
28

1 and the owner and operator of an industry, business and/or facility licensed to do business and
2 actually doing business in the State of California.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant RICHARD
4 WAYNE JOHNSON is an individual and is the owner, manager, and/ or director of Defendant
5 SIERRA STRIPING, INC..

6 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
7 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
8 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
9 were at all relevant times advised by skilled California employment law attorneys and knew the
10 requirements of the California Labor Code with respect to employee wage statements, payment of
11 wages, reimbursement of business expenses, and provision of meal and rest periods.

12 9. Defendants proximately caused Plaintiff and similarly situated employees to be
13 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
14 Complaint.

15 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
16 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
17 joint venturer of the remaining defendants and was acting within the course and scope of that
18 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
19 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
20 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
21 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
22 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
23 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
24 through 20, inclusive, when they have been determined.

25 11. On September 20, 2023, Plaintiff filed his Labor Code § 2699.3 Private Attorney
26 General Act (“PAGA”) notice with the California Labor & Workforce Development Agency
27 (“LWDA”). The LWDA did not respond within 65 days of filing of the PAGA notice.

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
3 class action pursuant to California Code of Civil Procedure section 382. The class that Plaintiff
4 seeks to represent is composed of and defined as follows:

5 All non-exempt employees who were employed by Defendants in California at any
6 time four (4) years prior to the filing of this Action up to the date that this matter is
7 certified as a class action.

8 13. This action has been brought and may be properly maintained as a class action,
9 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
10 defined community of interest in the litigation and the proposed classes are easily ascertainable.

11 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
12 members is impracticable under the circumstances of this case. While the exact
13 number of class members is unknown to Plaintiff at this time, Plaintiff is informed
14 and believes that Defendants may have employed dozens of individuals falling within
15 the above stated class definitions throughout the State of California during the
16 applicable statute of limitations, who were subjected to the practices outlined in this
17 Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

18 (b) Common Questions Predominate: Common questions of law and fact exist as to all
19 members of the Plaintiff Class and predominate over questions that affect only
20 individual members of the class. These common questions of law and fact include,
21 without limitation, the following:

- 22 (1) Whether Defendants accurately stated all required information on
23 paystubs issued to members of the Plaintiff Class;
24 (2) Whether Defendants maintained the time and payroll records for their
25 employees as required under the California Labor Code;
26 (3) Whether Defendants provided meal and rest periods to their employees
27 as required under the California Labor Code;
28

- 1 (4) Whether Defendants maintained policies and practices that provided
2 meal and rest periods to their employees as required under the
3 California Labor Code;
4 (5) Whether Defendants paid overtime and minimum wages to their
5 employees as required under the California Labor Code;
6 (6) Whether Defendants reimbursed their employees for reasonable
7 business expenses;
8 (7) Whether Defendants paid all wages owed to their employees at the
9 termination of employment.

10 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff
11 Class. Plaintiff also sustained damages arising out of Defendants' common course of
12 conduct in violation of the law as complained of herein. Defendants failed to provide
13 meal and rest periods to their employees, failed to pay all overtime and minimum
14 wages owed, and issued Plaintiff and all members of the putative class wage
15 statements that did not comply with Labor Code section 226. Additionally,
16 Defendants failed to reimburse Plaintiff and Class members for reasonable business
17 expenses, and failed to pay Plaintiff and Class Members all wages owed at the
18 termination of employment. As a result, each putative class member will have the
19 same basis for their legal claims.

20 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of
21 the putative class. Plaintiff resides in California and is an adequate representative of
22 the putative class as he has no interests that are adverse to those of absent class
23 members. Additionally, Plaintiff has retained counsel who have substantial
24 experience in complex civil litigation and wage and hour matters.

25 (e) Superiority: A class action is superior to other available means for the fair and
26 efficient adjudication of the controversy since individual joinder of all members of
27 the classes is impracticable. Class action treatment will permit a larger number of
28 similarly situated persons to prosecute their common claims in a single forum

1 simultaneously, efficiently, and without the unnecessary duplication of effort and
2 expense that numerous individual actions would engender. Further, as damages
3 suffered by each individual member of the classes may be relatively small, the
4 expenses and burden of the individual litigation would make it difficult or impossible
5 for individual members of the class to redress the wrongs done to them, and an
6 important public interest will be served by addressing the matter as a class action.
7 The cost to the court system of adjudication of such individualized litigation would be
8 substantial. Individualized litigation would also present the potential for inconsistent
9 or contradictory judgments.

10 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
11 management of this action that would preclude its maintenance as a class action.

12 **GENERAL ALLEGATIONS**

13 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as
14 though fully set forth herein.

15 16. Plaintiff and similarly situated employees worked for Defendants as non-exempt
16 employees in California. Plaintiff and similarly situated employees were paid on an hourly basis.
17 Plaintiff was employed by Defendants as a painter from approximately September 2021 to May
18 2023.

19 17. Defendants did not allow Plaintiff and similarly situated employees to take their
20 statutorily required meal and rest periods. Defendant failed to provide Plaintiff and other
21 similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour
22 of work as required under the law. Defendants also failed to provide a second meal period to
23 Plaintiff and similarly situated employees who work ten hours or more in a given shift. Plaintiff
24 and similarly situated employees regularly missed their meal and rest periods and/ or they were
25 provided late.

26 18. Defendants also failed to provide rest periods to Plaintiff and similarly situated
27 employees for every 4 hours worked or major fraction thereof. Defendants' management staff
28

1 were aware this was occurring and did not ensure meal and/ or rest periods were provided to
2 Plaintiff and similarly situated employees in compliance with California law.

3 19. When Defendants required Plaintiff and similarly situated employees to work
4 through their meal and/or rest periods, Defendants failed to pay Plaintiff and similarly situated
5 employees all statutorily required meal and rest period premiums owed.

6 20. These practices of Defendants have also resulted in unpaid minimum and
7 overtime wages.

8 21. Plaintiff and similarly aggrieved employees regularly worked over eight (8) hours
9 a day and/or forty (40) hours a week. However, Defendants did not pay these employees all
10 overtime and double time wages earned during their employment. Plaintiff and similarly
11 aggrieved employees received varying rates of pay based on the work being performed at various
12 times in a workday and throughout the workweek. However, Defendants failed to pay all
13 overtime and double time hours at the regular rate of pay by failing to include all rates of pay on
14 hours worked when paying overtime and double time pay.

15 22. As a result, Defendants did not provide Plaintiff and similarly situated employees
16 legally compliant wage statements noting, among other things, total hours worked, gross wages
17 earned, the applicable hourly rates in effect during the pay period and the corresponding number
18 of hours worked at each hourly rate. Defendants also did not provide Plaintiff and similarly
19 situated aggrieved employees all wages owed upon their termination or within seventy-two (72)
20 hours of their separation from employment.

21 23. Additionally, Defendants altered Plaintiff and similarly situated employees' time
22 records to avoid payment of overtime and to shift hours worked onto a subsequent week or pay
23 period in order to avoid payment overtime pay. This adjustment was done by Defendant without
24 Plaintiff's and similarly-situated employees' permission.

25 24. Defendants also did not provide Plaintiff and similarly situated aggrieved
26 employees all wages, including, without limitation, unpaid wages, and meal and rest break
27 premium pay, owed upon their termination or within seventy-two (72) hours of their separation
28 from employment.

1 25. Nor did Defendants reimburse Plaintiff and similarly situated employees for cell
2 phone usage for business purposes. Plaintiff and similarly situated employees used their cell
3 phones for business purposes on a regular basis, including for clocking in and out on work sites,
4 and were not reimbursed by Defendant.

5 26. Plaintiff was at all times classified by Defendants as non-exempt employee, and
6 was entitled to overtime pay, minimum wages, meal and rest periods, and reimbursement for
7 business expenses. However, Defendants failed to provide meal and rest periods to Plaintiff and
8 similarly situated employees, failed to pay all overtime and minimum wages owed, and violated
9 various other provisions of the Labor Code.

10 27. Plaintiff brings this Class Action on behalf of himself and similarly situated
11 employees in order to fully compensate himself and Class Members for their losses incurred
12 during the class period caused by Defendants' uniform policies and practices which failed to
13 lawfully compensate these employees.

14 28. Defendants' uniform policies and practices alleged herein were unlawful, unfair
15 and deceptive business practices whereby Defendants retained and continue to retain wages due
16 Plaintiff and the other Class Members. Plaintiff and the other Class Members seek an injunction
17 enjoining such conduct by Defendant in the future, relief for the named Plaintiff and the other
18 Class Members who have been economically injured by Defendant' past and current unlawful
19 conduct, and all other appropriate legal and equitable relief.

20 29. Defendants' uniform policies and practices to not provide Plaintiff and Class
21 Members meal and rest periods, not pay all minimum and overtime wages earned, not pay all
22 wages owed at termination or resignation, and not to provide compliant wage statements are
23 evidenced by Defendants' business records.

24 30. Defendants, as a matter of corporate policy, practice and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class
26 Members for required business expenses incurred in direct consequence of discharging their
27 duties on behalf of Defendants.

FIRST CAUSE OF ACTION
UNFAIR COMPETITION
As To All Defendants

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See Cal. Bus. and Prof. Code §§ 17200 *et seq.*

33. Defendants committed numerous violations of the California Labor Code throughout the employment relationship.

34. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

35. As a direct and legal result of Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution as a result of their unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
As To All Defendants

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

1 (1) gross wages earned, (2) total hours worked by the employee,
2 except for any employee whose compensation is solely based on a
3 salary and who is exempt from payment of overtime under
4 subdivision (a) of Section 515 or any applicable order of the
5 Industrial Welfare Commission, (3) the number of piece-rate units
6 earned and any applicable piece rate if the employee is paid on a
7 piece-rate basis, (4) all deductions, provided that all deductions
8 made on written orders of the employee may be aggregated and
9 shown as one item, (5) net wages earned, (6) the inclusive dates of
10 the period for which the employee is paid, (7) the name of the
11 employee and the last four digits of his or her social security number
12 or an employee identification number other than a social security
13 number, (8) the name and address of the legal entity that is the
14 employer and, if the employer is a farm labor contractor, as defined
15 in subdivision (b) of Section 1682, the name and address of the legal
16 entity that secured the services of the employer, and (9) all
17 applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the
19 employee. The deductions made from payment of wages shall be
20 recorded in ink or other indelible form, properly dated, showing the
21 month, day, and year, and a copy of the statement and the record of
22 the deductions shall be kept on file by the employer for at least three
23 years at the place of employment or at a central location within the
24 State of California.

25 38. Defendants failed to provide an itemized statement or failed to provide an accurate
26 and complete itemized statement showing the requirements set forth in Labor Code section
27 226(a). Defendants failed to list on the wage statements provided to Plaintiff and similarly
28 situated employees all hours worked and the applicable rates of pay and the correct overtime rate.
Plaintiff alleges that Defendants failed to provide accurate itemized wage statements in
accordance with Labor Code section 226(a) to all members of the Class.

39. Additionally, Plaintiff alleges he suffered injury as a result of Defendants'
knowing and intentional failure to provide accurate and complete information as required by any
one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and
Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
position would not be able to readily ascertain the information without reference to other
documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

40. Also, California Labor Code section 226 has been violated by, or was caused to be violated by, Defendants and Defendant RICHARD WAYNE JOHNSON. Plaintiff is informed and thereon believes that Defendant RICHARD WAYNE JOHNSON was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant RICHARD WAYNE JOHNSON may be held liable as the employer for the violations California Labor Code section 226.

41. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiff and Class Members were damaged and are entitled to statutory and civil penalties under the Labor Code, and attorney's fees and costs, in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Failure to Pay Minimum Wage for All Hours Worked)
As To All Defendants

42. Plaintiff hereby incorporates by reference Paragraphs 1 through 41 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

43. Defendants were required to compensate Plaintiff and similarly situated employees with at least the State's minimum wage for all hours worked. See Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

44. Also, provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, such as IWC Wage Order No. 16-2001, and California Labor Code section 1194 have been violated by, or were caused to be violated by, Defendants and Defendant RICHARD WAYNE JOHNSON. Plaintiff is informed and thereon believes that Defendant RICHARD WAYNE JOHNSON was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant RICHARD WAYNE JOHNSON may be held liable as the employer for the violations of provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, including IWC Wage Order No. 16-2001, and California Labor Code section 1194.

45. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

46. Defendants' conduct described herein violates California Labor Code section 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff Class have been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff and the Class now seek these wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

FOURTH CAUSE OF ACTION
(Failure to Provide Meal and Rest Periods)
As To All Defendants

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

49. Labor Code section 510 and Wage Order 16-2001, section 10(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

50. Labor Code section 510 and Wage Order 16-2001 section 11(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

51. Plaintiff alleges that Defendants failed to provide Plaintiff and similarly situated employees with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff and similarly situated employees worked more than five (5) hours in a day, or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff and similarly situated employees worked more than ten (10) hours in a day.

52. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten (10) minutes for each work period that he and similarly situated employees worked for four (4) hours or major fraction thereof.

53. Also, provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, such as IWC Wage Order No. 16-2001, and California Labor Code section 226.7 have been violated by, or were caused to be violated by, Defendants and Defendant RICHARD WAYNE JOHNSON. Plaintiff is informed and thereon believes that Defendant RICHARD WAYNE JOHNSON was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant RICHARD WAYNE JOHNSON may be held liable as the employer for the violations of provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, including IWC Wage Order No. 5-2001, and California Labor Code section 226.7.

54. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiffs and members of the Class are entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. See Labor Code § 226.7 and Wage Order 16-2001 §§ 10(F), 11(D).

FIFTH CAUSE OF ACTION
(Waiting Time Penalties)
As To All Defendants

55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully set forth herein.

56. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. California Labor Code § 201.

57. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. California Labor Code § 203.

1 58. Plaintiff and similarly situated employees did not receive all wages at their
2 termination or separation from employment, including, but not limited to, unpaid overtime and
3 minimum wages, and unpaid meal and rest period penalties.

4 59. Defendants knew of their obligation to pay Plaintiff and Class Members and
5 Defendants' failure to pay all wages was in complete disregard of their obligations. Such
6 conduct shows Defendants' knowledge of their obligation to pay all wages owed upon
7 termination and willful refusal.

8 60. Also, California Labor Code sections 201- 203 have been violated by, or were
9 caused to be violated by, Defendants and Defendant RICHARD WAYNE JOHNSON. Plaintiff
10 is informed and thereon believes that Defendant RICHARD WAYNE JOHNSON was a person
11 acting on behalf of Defendants, including as an owner and/or managing agent of Defendants,
12 within the meaning of California Labor Code section 558.1. Therefore, Defendant RICHARD
13 WAYNE JOHNSON may be held liable as the employer for the violations California Labor Code
14 sections 201- 203.

15 61. As a proximate result of the Defendants' conduct, Plaintiff and Class members
16 have been damaged and deprived of their wages and thereby seek their daily rate of pay
17 multiplied by thirty (30) days for Defendants' failure to pay all wages due.

18
19 **SIXTH CAUSE OF ACTION**
20 **(Failure to Pay Overtime Wages)**
 As To All Defendants

21 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as
22 though fully set forth herein.

23 63. During the period Plaintiff and similarly situated employees were employed by
24 Defendants, Defendants were required to compensate them one and one-half (1½) times the
25 regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours
26 per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
27 hours per day. See California Labor Code §§ 510, 1194. Although Plaintiff and similarly
28

1 situated employees regularly worked in excess of eight (8) hours a day and/or forty (40) hours
2 per week, Defendants failed to pay all overtime wages owed to them.

3 64. In addition, Defendants failed to pay overtime and doubletime at the correct
4 regular rate of pay by failing to incorporate all rates of pay into the regular rate calculation.

5 65. Plaintiff and Class members were non-exempt employees under the
6 administrative, executive, or professional exemptions of the applicable Wage Order and
7 California Labor Code section 510.

8 66. In addition, California Labor Code section 558.1, subsection (a), provides that
9 “Any employer or other person acting on behalf of an employer, who violates, or cause to be
10 violated, any provision regulating minimum wages or hours and days of work in any order of the
11 Industrial Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7,
12 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

13 67. California Labor Code section 558.1, subsection (b), further provides that the term
14 “other person acting on behalf of any employer” means “a natural person who is an owner,
15 director, officer, or managing agent of the employer.”

16 68. Provisions regulating minimum wages or hours and days of work in any order of
17 the Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor
18 Code section 1194 have been violated by, or were caused to be violated by, Defendants and
19 Defendant RICHARD WAYNE JOHNSON. Plaintiff is informed and thereon believes that
20 Defendant RICHARD WAYNE JOHNSON was a person acting on behalf of Defendants,
21 including as an owner and/or managing agent of Defendants, within the meaning of California
22 Labor Code section 558.1. Therefore, Defendant RICHARD WAYNE JOHNSON may be held
23 liable as the employer for the violations of provisions regulating minimum wages or hours and
24 days of work in any order of the Industrial Welfare Commission, including IWC Wage Order No.
25 5-2001, and California Labor Code section 1194.

26 69. Defendants purposefully failed to pay all overtime wages owed to Plaintiff and
27 Class Members in order to avoid overtime and other wage and hour requirements under the
28 Labor Code.

1 70. Defendants' conduct described herein violates California Labor Code sections 510
2 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and Class
3 members have been damaged and deprived of overtime wages, in an amount to be established at
4 trial. Plaintiff now seeks these wages, attorney's fees and costs, and interest pursuant to
5 California Labor Code sections 1194.

6 **SEVENTH CAUSE OF ACTION**
7 **(Failure to Reimburse Business Expenses)**
8 **As To All Defendants**

9 71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as
10 though fully set forth herein.

11 72. Labor Code section 2802(a) states that "An employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
15 believed them to be unlawful."

16 73. Defendants knew that Plaintiff and members of the Class incurred expenses for
17 work purposes, including but not necessarily limited to business use of employee cell phones.
18 However, Defendants did not reimburse Plaintiff or members of the Class for these expenses.

19 74. Also, California Labor Code section 2802 has been violated by, or was caused to
20 be violated by, Defendants and Defendant RICHARD WAYNE JOHNSON. Plaintiff is
21 informed and thereon believes that Defendant RICHARD WAYNE JOHNSON was a person
22 acting on behalf of Defendants, including as an owner and/or managing agent of Defendants,
23 within the meaning of California Labor Code section 558.1. Therefore, Defendant RICHARD
24 WAYNE JOHNSON may be held liable as the employer for the violations California Labor Code
25 section 2802.

26 75. Defendants' conduct described herein violated California Labor Code section
27 2802. As a proximate result of Defendants' conduct, Plaintiff and members of the Class have
28 been damaged in an amount to be established at trial, and are entitled to recover these damages,
as well as interest and reasonable attorney's fees and costs, pursuant to statute.

EIGHTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.
As To All Defendants

76. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 75 as though fully set forth herein.

77. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code violations identified above.

78. On or about September 20, 2023, Plaintiff sent written notice to the LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

79. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all Aggrieved Employees for all violations of the Labor Code from September 20, 2022, through trial on this matter.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For an order certifying the class;
3. For an order certifying Plaintiff's counsel as class counsel;
4. For an order appointing Plaintiff as class representative;
5. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
6. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;

7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
8. For injunctive relief;
9. For an award of prejudgment and post-judgment interest; and
10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: January 26, 2024

Castle Law: California Employment Counsel

By:

Kent L. Bradbury

Timothy B. Del Castillo

Attorneys for Plaintiff WILLIAM MUSTAIN and the
Class

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: January 26, 2024

Castle Law: California Employment Counsel

By:

Kent L. Bradbury

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