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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ALEXANDER COTA, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

J.W. FLOOR COVERING, INC, a California Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 37-2023-00046498-CU-OE-CTL

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:

(1) MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, AND 1197);

(2) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, AND 1198);

(3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, and 558);

(4) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, and 558);

(5) FAILURE TO REIMBURSE FOR ALL NECESSARY BUSINESS EXPENDITURES (LABOR CODE §§ 2802, 2804);

(6) WAGE STATEMENT PENALTIES (LABOR CODE §§ 226 *et seq.*, 246);

(7) UNFAIR COMPETITION (BUS. & PROF. CODE §§ 17200, *et seq.*); and

(8) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS

GENERAL ACT (LABOR CODE § 2698 *et seq.*).

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Alexander Cota ("Plaintiff"), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("Complaint") against Defendants J.W. Floor Covering, Inc., and Does 1 through 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

<u>JURISDICTION</u>

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this class action for recovery of unpaid wages and penalties under California Labor Code §§ 204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, California Business and Professions Code §§ 17200, *et. seq.* (Unfair Competition), and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"), in addition to seeking declaratory 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.

<u>VENUE</u>

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

<u>PARTIES</u>

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident, residing in the County of San Diego. During the four years immediately preceding the filing of the Complaint in this action and within the

statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 204, 226, 226.7, 246, 510, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, California Business and Professions Code §§ 17200, *et seq.*, and Wage Order 16, which sets employment standards for the construction industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and do) business by operating a flooring company that serves San Diego and San Diego Counties, and employed Plaintiff and other similarly situated non-exempt employees within the County of San Diego and the State of California and, therefore, were (and are) doing business in the County of San Diego 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 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 in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes (as defined in Paragraph 18).

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

were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of 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 acted 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 members of the Classes (as defined in Paragraph 18).

GENERAL FACTUAL ALLEGATIONS

9. Defendants serve San Diego County and the surrounding areas, as a construction company that specializes in flooring services. Since February 2022, Plaintiff has worked for Defendants as a non-exempt employee in the position of "Residential Installer".

10. Throughout his employment with Defendants, Plaintiff was paid on a piece-rate basis, whereby he was paid a pre-determined rate per flooring unit completed. Plaintiff and other non-exempt employees were compensated exclusively on a piece-rate basis, and for at least a portion of Plaintiff's employment, Defendants did not maintain any record of the hours worked by Plaintiff or other non-exempt employees who were compensated on a piece-rate basis. Additionally, when Defendants did begin to record Plaintiff's hours worked, Defendants maintained a policy and practice of manipulating Plaintiff's timecards to reflect less hours worked. When Plaintiff brought the issue of his timecards reflecting less hours worked to human resources, Defendants did not rectify the situation but instead told Plaintiff that his hours worked did not matter because he was being paid on a piece-rate basis. As a result of Defendants' failure to accurately record Plaintiff's and other non-exempt employee's hours worked, Defendants failed to pay Plaintiff and other non-exempt employees all minimum and overtime wages owed.

11. Moreover, during Plaintiff's employment with Defendants, Defendants failed to keep track of Plaintiff's hours spent performing non-productive tasks such as traveling to and from job sites, unloading tools, attending meetings, and purchasing materials. As a result of Defendants' failure to record Plaintiff's and other non-exempt employees time spent performing

non-productive tasks, Defendants failed to accurate records of Plaintiff's hours worked and failed to pay Plaintiff and other non-exempt employees who were compensated on a piece-rate basis for their "non-productive" time (i.e., hours that they were working but were not actually performing piece-rate work). *See Gonzalez v. Downtown LA Motors, LP,* 215 Cal.App.4th 36 (2013) (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws).

12. Additionally, throughout Plaintiff's employment with Defendants, Plaintiff regularly worked in excess of 8 hours per day and/or 40 hours per week. However, as a result of Defendants' failure to record Plaintiff and other piece-rate employees non-productive time Defendants have failed to compensate their employees at one-and-a-half times the regular rate of pay for overtime hours, as non-productive wages are required to be included in the regular rate of pay for purposes of determining overtime compensation. Additionally, upon information and belief, Defendants paid Plaintiff and other non-exempt employees non-discretionary incentive pay, including but not limited to, bonus payments and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). However, Defendants failed to properly calculate Plaintiff's and other non-exempt employees' regular rates of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

13. Defendants were further obligated to provide Plaintiff and similarly-situated employees with paid sick time pursuant to the Healthy Workplaces, Healthy Families Act of 2014 (Cal. Labor Code §§ 245-249) ("paid sick time"). Pursuant to Cal. Labor Code § 245.5(e) and § 246(l), the wages for the "paid sick days" are to be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek" or "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." However, Defendants failed to properly provide and/or properly compensate all wages owed to Plaintiff and similarly-situated employees

because they had a uniform policy or practice of paying paid sick time used by Plaintiff and similarly-situated employees at their regular hourly base without including earned non-discretionary bonuses, piece-rate, or other incentives (hereinafter referred to as "Incentive Pay") and/or in another manner that did not comply with Labor Code §§ 245.5(e) and 246(l).

14. In addition, Defendants did not properly compensate Plaintiff or other non-exempt employees paid on a piece-rate basis for rest periods, as required under Labor Code 226.2 and *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 ("under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately compensated in a piece-rate system."). Although Defendants maintained a payroll code listed as "Paid Break" for rest and recovery compensation, Defendants did not in fact separately compensate Plaintiff and other non-exempt employees for rest periods. Instead, upon information and belief, Defendant relabeled a portion of the gross piece-rate wages as "Paid Break" compensation, such that the gross wages paid simply matched the total piece-rate wages with no additional wages paid for rest periods. Accordingly, Defendants are liable for rest period premiums for their failure to accurately compensate Plaintiff and other non-exempt employees paid on a piece-rate basis for rest periods.

15. Defendants further failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods due to Defendants' meal period policies/practices, which have frequently resulted in, missed, late (commencing after the fifth hour of work), and/or short (less than 30 minutes) meal periods. Additionally, Defendants failed to provide Plaintiff and other non-exempt employees with second meal periods on shifts over 10.0 hours. Further, on those occasions when Plaintiff was not provided with a meal period to which he was entitled, Defendants had a policy and practice of manipulating Plaintiff's timesheets to reflect a meal period that was not taken. Plaintiff brought the issue of Defendants' failure to provide him with a meal period on multiple occasions as well as the manipulation of his timesheets, however Defendant never paid him the required meal period premium for their failure to provide him with a legally compliant meal period or paid him for the time he spent working during his meal period. Upon information and belief, Defendants maintained no mechanism for the payment of meal

period premium payments as required by Labor Code § 226.7, in the event that a legally-compliant meal period was not provided to their non-exempt employees.

16. Defendants failed to reimburse Plaintiff and other non-exempt employees for use of their personal cellular phones for work activities. Specifically, Defendants required Plaintiff and other non-exempt employees to use their personal cellphones to communicate with their managers while they were at the worksite. However, Defendants failed to reimburse Plaintiff and other non-exempt employees for the use of their personal cellular phones for business purposes.

17. As a result of Defendants' failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees. Defendants' wage statements are also facially deficient because they fail to include the gross wages earned, net wages earned, and the number of piece rate units earned and the applicable piece rate in violation of Labor Code § 226(a)(1) - (3).

18. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for each cause of action pled herein has been calculated to include 178 days preceding the filing of this action.

CLASS ACTION ALLEGATIONS

19. **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 Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who (i) performed work that was compensated on a piece-rate basis; and/or (ii) were subject to Defendants' timekeeping polices/practices, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8 hours per day and/or 40 hours per week and (i) performed work that was compensated on a piece-rate basis; (ii) were subject to Defendants' timekeeping polices/practices; and/or (iii) received Incentive Pay during a corresponding pay period, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift: (i) in excess of 5.0 hours without a meal period of at least 30 minutes commencing prior to the end of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts; and/or (ii) in excess of 10.0 hours without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours while performing work that was compensated on a piece-rate basis, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

e. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who were not reimbursed for the use of their personal cellular phones, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

f. The Wage Statement Class consists of (i) all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who received a wage statement from Defendants; and/or (ii) any of Defendants' current and former employees who were compensated on a piece-rate basis and received a wage statement that did not list all piece-rate units earned and the applicable piece-rate, during the one year and 178 days immediately preceding the filing of the Complaint through the present.

20. **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

and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than one hundred (100) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **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 members including, without limitation to:

i. Whether Plaintiff and members of the Minimum Wage Class were compensated for all hours actually worked;

ii. Whether Defendants' overtime policies/practices violate the applicable Labor Code provisions, including, but not limited to Sections 510 and 1194, by requiring overtime work and not paying members of the Overtime Class for said work according to the overtime laws of the State of California;

iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;

iv. Whether Defendants authorized and permitted legally compliant paid rest periods to members of the Rest Period Class; and

v. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime Class and/or Minimum Wage class;

vi. Whether Defendants failed to reimburse members of the Employee Expense Class for all necessary business expenses incurred pursuant to Labor Code sections 2802 and 2804; and

vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code §§ 226 and 246.

22. **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 their system of compensating

employees on a piece-rate basis, as well as their uniform meal period policies/practices. As such, these 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.

23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all minimum and overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was not reimbursed for use of his cellphone, and was not furnished legally compliant wage statements.

24. **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.

25. **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.

26. As such, the Classes identified in Paragraph 18 are maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

28. Wage Order 16, § 4 and 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.

29. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to Defendants' piece-rate compensation structure for members of the Minimum Wage Class and timekeeping policies and practices, which resulted in Defendants failing to pay these individuals for all hours worked. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated

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 16.

30. Defendants' policy and practice of not paying all minimum wages violates Labor Code §§ 204, 210, 216, 558, 1182.12, 1197.1, and 1198, and Wage Order 16.

31. Such a practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to Labor Code §§ 204, 210, 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

33. 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 all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

34. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek.

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

regularly and systematically, as a policy and practice, did not record employees' hours and did not pay any overtime wages. Defendants' policy and practice of requiring overtime work and not paying at the proper overtime rates for said work violates Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198, and Wage Order 16.

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

38. 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 16, § 10. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

39. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 16, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

41. Wage Order 16, § 12 and Labor Code §§ 226.7, 516, and 558 establish the right of

employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Further, *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864 mandates that employees paid pursuant to a piece-rate compensation system be compensated separately for their rest periods.

42. Due to their unlawful rest period policies and/or practices, Defendants did not authorize and permit members of the Rest Period Class to take the paid rest periods to which they are legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation in accordance with Labor Code § 226.7.

43. The foregoing policies and practices are unlawful and 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 Labor Code §§ 226.7, 516, and 558, and Civil Code §§ 3287(b) and 3289.

<u>FIFTH CAUSE OF ACTION</u>

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

45. 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."

46. 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."

47. As alleged herein, due to Defendants' unlawful reimbursement practices, Defendants failed to indemnify Plaintiff and the members of the Employee Expense Class for all necessary business expenses incurred, including, among other things, the cost of use of their personal cellphone.

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

SIXTH CAUSE OF ACTION

WAGE STATEMENT PENALTIES

(AGAINST ALL DEFENDANTS)

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

50. Plaintiff is informed and believes, and based thereon allege, 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, all meal and rest period premium wages earned, and all piece-rate units earned and the applicable piece rate in violation of Labor Code § 226.

51. 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 their minimum and overtime wages owed, rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

52. 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.*, and 246 (h).

<u>SEVENTH CAUSE OF ACTION</u>

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

54. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code §§ 17200, *et seq.* by failing to pay Plaintiff and members of the Classes all overtime and minimum wages and meal and rest period premium wages, failing to reimburse for necessary business expenses, and failing to pay all final wages upon separation of employment.

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

56. 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 any and all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

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EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

60. 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 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 minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;

e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174 and 1198.

61. On October 25, 2023, Plaintiff notified Defendants via certified mail, and notified 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 the violations of the California Labor Code identified in Paragraph 60 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699©.

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

PRAYER

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

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;

3. For an order appointing counsel for Plaintiff as counsel for the Classes;

4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 558, 1194, 1194.2, and 1197;

5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

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

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

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

9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§ 226 *et. Seq*. and 246(h);

10. Upon the Seventh Cause of Action, for injunctive relief and restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions

Code §§ 17200, *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, 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 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 Labor Code violations identified in Paragraph 60 (a)-(i);

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

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 1194, 2699(g), 2802©, and Code of Civil Procedure § 1021.5; and

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

Dated: January 2, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________________
Paul K. Haines
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: January 2, 2024

HAINES LAW GROUP, APC

By: ______________________________
Paul K. Haines
Attorneys for Plaintiff