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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF MARIN**

JOAQUIN MORALES, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

WRIGHT TREE SERVICE OF THE WEST,  
INC.; an Iowa Corporation; and DOES 1  
through 100,

Defendants.

CASE NO. CV0001290

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

- (1) **MINIMUM WAGE VIOLATIONS  
(LABOR CODE §§ 1182.12, 1194,  
1194.2, 1197, 1198);**
- (2) **FAILURE TO PAY ALL  
OVERTIME WAGES (LABOR  
CODE §§ 204, 510, 1194, 1198);**
- (3) **FAILURE TO PAY REPORTING  
TIME PAY (LABOR CODE §§ 204,  
1198);**
- (4) **MEAL PERIOD VIOLATIONS  
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **REST PERIOD VIOLATIONS  
(LABOR CODE §§ 226.7, 516, 558);**
- (6) **FAILURE TO REIMBURSE FOR  
ALL NECESSARY BUSINESS  
EXPENDITURES (LABOR CODE  
§§ 2802, 2804);**
- (7) **WAGE STATEMENT PENALTIES  
(LABOR CODE §§ 226 *et seq.*,  
1174(d));**
- (8) **WAITING TIME PENALTIES  
(LABOR CODE §§ 201-203); and**
- (9) **UNFAIR COMPETITION (BUS &  
PROF CODE § 17200 *et seq.*); and**

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**(10) CIVIL PENALTIES UNDER  
THE PRIVATE ATTORNEYS  
GENERAL ACT (LABOR  
CODE § 2698 *et seq.*).  
  
DEMAND FOR JURY TRIAL  
UNLIMITED CIVIL CASE**

1 Plaintiff Joaquin Morales (“Plaintiff”), on behalf of himself and all others similarly  
2 situated, hereby brings this First Amended Class and Representative Action Complaint  
3 (“Complaint”) against Defendants Wright Tree Service of the West, Inc., an Iowa Corporation;  
4 and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges  
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this  
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions  
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1174,  
10 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, 2804, and Industrial Welfare Commission  
11 Wage Order 5 (“Wage Order 5”), in addition to seeking injunctive relief, declaratory relief, and  
12 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This  
13 Court has jurisdiction over Defendants’ violations of the California Labor Code because the  
14 amount in controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil  
17 Procedure sections 395(a) and 395.5 in that liability arose in this county because at least some of  
18 the transactions that are the subject of this Complaint occurred therein and/or each defendant is  
19 found, maintains offices, transacts business, or has an agent therein.

20 3. Venue is proper in Marin County because Defendants are a foreign corporation  
21 with a principal place of business in Iowa, and have not filed a statement with the California  
22 Secretary of State designating a principal office in California. As such, venue is proper in any  
23 county in the state of California. *See Easton v. Sup. Ct.*, (1970) 12 Cal.App.3d 243, 246-47  
24 (“[Defendant’s] status is that of a foreign corporation only. As such, it may be sued in any county  
25 in the state.”).

26 **PARTIES**

27 4. Plaintiff is, and at all times relevant herein was, an individual over the age of  
28 eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident.

1 Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff  
2 was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of  
3 Defendants' policies and/or practices complained of herein, lost money and/or property, and has  
4 been deprived of the rights guaranteed by California Business and Professions Code § 17200 *et*.  
5 *seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2,  
6 1197, 1198, 2698 *et seq.*, 2802, 2804, and Wage Order 5, which sets employment standards for  
7 the public housekeeping industry, including tree service firms and landscaping industry.

8 5. Plaintiff is informed and believes, and based thereon alleges, that during the  
9 applicable statute of limitations for each cause of action pled herein and continuing to the present,  
10 Defendants engaged in and continue to engage in providing vegetation management, storm  
11 restoration, and work planning services to utility companies and their communities across North  
12 America, and employed Plaintiff and other, similarly-situated non-exempt employees within  
13 Marin County, and the State of California and, therefore, were (and are) doing business in Marin  
14 County and the State of California.

15 6. Plaintiff does not know the true names or capacities, whether individual, partner,  
16 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said  
17 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
18 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,  
19 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,  
20 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,  
21 and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the  
22 unlawful employment practices, wrongs, injuries and damages complained of herein.

23 7. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
24 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

1 within the course and scope of said agency and employment. Defendants, and each of them,  
2 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions  
3 complained of herein.

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

9 **GENERAL FACTUAL ALLEGATIONS**

10 10. Defendants provide vegetation management, storm restoration, and work planning  
11 services to utility companies and their communities across North America. Plaintiff worked for  
12 Defendants at its Novato, California and Sacramento, California facilities as a non-exempt “top  
13 climber” (or similarly titled position) from approximately April 2019, until approximately July 3,  
14 2023.

15 11. During Plaintiff’s employment with Defendants, Plaintiff was not paid for all  
16 hours he actually worked. Specifically, Defendants required Plaintiff and other non-exempt  
17 employees to meet at the company yard by no later than 7:00 a.m. for roll call prior to driving out  
18 to their respective worksites. During this time, Plaintiff and other non-exempt employees were  
19 not allowed to clock in for their shifts, but instead a supervisor would almost always record their  
20 starting times as exactly 7:00 a.m., such that Plaintiff and other non-exempt employees were not  
21 paid for the time spent at the yard and/or driving to their worksites. Similarly, Plaintiff and other  
22 non-exempt employees had to drive back to the company yard while off the clock after the  
23 completion of their work without being compensated for this additional time as their supervisors  
24 would almost always record 3:30 p.m. as the ending of the shift. As a result, Defendants required  
25 Plaintiff and other non-exempt employees to perform work while off-the-clock, and Defendants  
26 failed to compensate Plaintiff and other non-exempt employees for all minimum and overtime  
27 wages owed.

28 12. Upon information and belief, Defendants have failed to compensate Plaintiff and

1 other non-exempt employees for all required reporting time pay. For example, Plaintiff was  
2 required to report to the company yard by 7:00 a.m. each day but on occasions he was sent home  
3 due to inclement weather. When this happened to Plaintiff or to other non-exempt employees,  
4 upon information and belief, Defendants did not compensate Plaintiff or other non-exempt  
5 employees for at least two hours of work and/or half of their usually scheduled hours at their  
6 regular rate of pay. Plaintiff alleges that this policy and practice is in violation of the reporting  
7 time pay requirements under California law, including Wage Order 5, § 5, and as a result,  
8 Defendants have failed to pay Plaintiff and other non-exempt employees for all required reporting  
9 time pay.

10 13. Plaintiff often worked over eight (8) hours per workday and/or more than forty  
11 (40) hours per workweek but did not receive overtime compensation equal to one and one-half  
12 times his regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff  
13 and other non-exempt employees Per Diem pay and/or other forms of pay that are not excludable  
14 from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are  
15 collectively referred to as "Incentive Pay"). However, Defendants failed to properly calculate  
16 Plaintiff's and other non-exempt employees' regular rates of pay as a result of their receipt of  
17 Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

18 14. Throughout Plaintiff's and other non-exempt employees' employment with  
19 Defendants, Plaintiff and other non-exempt employees were not provided with a full 30 minutes  
20 of net rest for their meal periods. Additionally, Plaintiff and other non-exempt employees were  
21 not always provided with meal periods commencing before the end of the fifth hour of work,  
22 especially due to the nature of the work which often had them up in trees performing work when  
23 the fifth hour of work passed. Defendants also failed to provide Plaintiff and other non-exempt  
24 employees with a second duty free full 30 minutes of net rest meal period for shifts of over 10.0  
25 hours in violation of California law. Further, on those occasions when Defendants failed to  
26 provide a legally compliant meal period to Plaintiff and other non-exempt employees, Defendants  
27 failed to always compensate Plaintiff and other non-exempt employees with the required meal  
28 period premium for each workday in which they experienced a meal period violation as mandated

by Labor Code § 226.7.

15. Plaintiff and other non-exempt employees were also not authorized and permitted to take all legally required and compliant rest periods because Defendants failed to provide at least 10 minutes of net rest in an area appropriate for rest away from the workstation. Specifically, as a result of the work demands imposed by Defendants, Defendants did not authorize and permit one rest period for every four hours worked, or major fraction thereof, as non-exempt employees were often working up in a tree and unable to take a rest period. On those occasions when Plaintiff and other non-exempt employees were not authorized and permitted to take all legally compliant rest periods to which they were entitled, Defendants failed to always compensate Plaintiff and other non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

16. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were required to use their personal cellular phones to communicate with other employees, managers/supervisors, and/or customers. Plaintiff and other non-exempt employees were also required to provide and wear special "Logger Boots" to prevent electric shock and to supply and wear their own gloves and rain gear. Defendants knew or should have known that Plaintiff and other non-exempt employees were necessarily incurring expenses due to the use of their personal cellular phones, "Logger Boots," gloves, and rain gear in the direct discharge of their duties. Yet, despite the necessity of Plaintiff and other non-exempt employees using their personal cellular phones, "Logger Boots," gloves, and rain gear for work activities and Defendants knowing or should have knowing about same, Defendants failed to reimburse Plaintiff and other non-exempt employees for these necessary business expenditures.

17. Throughout Plaintiff's employment with Defendants, Defendants failed to properly incorporate the value of earned Incentive Pay into the regular rate of pay when calculating employees' sick time pay. Instead, Defendants paid Plaintiff and other non-exempt employees at their base rates of pay for sick time pay earned, in violation of California law.

18. As a result of Defendants' failure to compensate Plaintiff and other non-exempt employees for all minimum and overtime wages, reporting time wages, meal and rest period

premium wages, and sick pay, Defendants maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. Additionally, upon information and belief, Plaintiff alleges that Defendants issued facially deficient wage statements because they failed to include the amount of sick hours accrued and available for Plaintiff and other non-exempt employees.

19. As a further result of Defendants' failure to pay all minimum and overtime wages, reporting time wages, meal and rest period premium wages, failure to pay all sick time pay at the correct regular rate of pay, and failure to reimburse for necessary business expenditures, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

### **CLASS ACTION ALLEGATIONS**

20. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 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 were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per week and: (i) received Incentive Pay during the same pay period; and/or (ii) were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.
- c. The Reporting Time Class consists of all of Defendants' current and former non-exempt employees in California who reported to work and were provided less than two hours of work and/or less than half their regularly scheduled hours worked, on at least one occasion during the four years immediately preceding the filing of this action through the present.
- d. The Meal Period Class consists of all of Defendants' current and former non-



exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours; and/or (iii) earned Incentive Pay and received a meal period premium during the same pay period, during the four years immediately preceding the filing of this action through the present.

e. 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, during the four years immediately preceding the filing of this action through the present.

f. 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, "Logger Boots," gloves, and rain gear for business purposes., during the four years immediately preceding the filing of this action through the present.

g. The Wage Statement Class consists of all of the Minimum Wage Class, Overtime Class, Reporting Time Class, Meal Period Class, Rest Period Class, and/or Employee Expense Class, who received a wage statement from Defendants at any time during the one year immediately preceding the filing of this action through the present.

h. The Waiting Time Class consists of: (i) all members of the Minimum Wage Class, Overtime Class, Reporting Time Class, Meal Period Class, Rest Period Class, and/or Employee Expense Class; and/or (ii) all of Defendants' current and former non-exempt employees in California who earned Incentive Pay and received sick time pay during the same pay period, who separated their employment with Defendants during the three years immediately preceding the filing of this action through the present.

21. **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 members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

**22. 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 Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Minimum and Overtime Wage Classes for all hours actually worked;
- ii. Whether Defendants properly paid all overtime wages to members of the Overtime Class;
- iii. Whether Defendants provided all reporting time pay to members of the Reporting Time Class pursuant to Wage Order 5 § 5, Labor Code §§ 204 and 1198;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for necessary work expenses;
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- ix. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class as required under California law.

**23. Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies  
2 and/or practices applicable to each individual class member, including but not limited to  
3 Defendants' timekeeping policies/practices, and meal and rest period policies/practices. As such,  
4 the common questions predominate over individual questions concerning each individual class  
5 member's showing as to their eligibility for recovery or as to the amount of their damages.

6       24.     **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because  
7 Plaintiff was employed by Defendants as a non-exempt employee in California during the  
8 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged  
9 herein, Plaintiff, like the members of the Classes, was not paid all minimum, overtime, and  
10 reporting time wages owed due to Defendants' timekeeping policies/practices, was not provided  
11 all required meal periods, was not authorized and permitted all rest periods, did not receive  
12 premium pay for non-compliant meal and rest periods, was not reimbursed for all necessary  
13 business expenditures, was not provided with accurate, compliant, itemized wage statements, and  
14 was not paid all wages owed at his time of separation from employment.

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

21       26.     **Superiority:** The California Labor Code is broadly remedial in nature and serves  
22 an important public interest in establishing minimum working conditions and standards in  
23 California. These laws and labor standards protect the average working employee from  
24 exploitation by employers who have the responsibility to follow the laws and who may seek to  
25 take advantage of superior economic and bargaining power in setting onerous terms and  
26 conditions of employment. The nature of this action and the format of laws available to Plaintiff  
27 and members of the Classes make the class action format a particularly efficient and appropriate  
28 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 Class(es) 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 Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are maintainable as classes under § 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 5, § 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. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the

1 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were  
2 subject to the control of Defendants and/or suffered or permitted to work under the California  
3 Labor Code and Wage Order 5.

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

9 30. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and  
10 members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 20(a) and  
11 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and  
12 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;  
13 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages  
14 and/or penalties pursuant to California Labor Code § 558(a).

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

19 32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and  
20 1198, which provide that non-exempt employees are entitled to all overtime wages and  
21 compensation for all overtime hours worked and provide a private right of action for the failure  
22 to pay all overtime compensation for overtime work performed.

23 33. At all relevant times, Defendants were required to compensate hourly non-exempt  
24 employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked  
25 pursuant to California Labor Code § 1194 and IWC Wage Order No. 5. Wage Order 5, § 3(B)  
26 requires an employer to pay an employee "one and one-half (1½) times such employee's regular  
27 rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours in a  
28 workweek. Labor Code § 510 and Wage Order 5, Section 3 also require an employer to pay an

1 employee double the employee's regular rate of work in excess of 12 hours each workday and/or  
2 any work in excess of eight (8) hours on the seventh day of the workweek. As alleged herein,  
3 Defendants caused Plaintiff and the members of the Overtime Class to work overtime and/or  
4 double-time hours but did not properly compensate Plaintiff and the members of the Overtime  
5 Class at one and one-half times their regular rate of pay (or double-time, in the case of double-  
6 time hours) for such hours.

7 34. The foregoing policies and practices are unlawful and create entitlement to  
8 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of  
9 overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and  
10 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198;  
11 Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PAY REPORTING TIME PAY**

14 **(AGAINST ALL DEFENDANTS)**

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

16 36. Wage Order 5, § 5 provides that "[e]ach workday an employee is required to report  
17 for work and does report, but is not put to work or is furnished less than half said employee's  
18 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)  
19 hours, at the employees regular rate of pay, which shall not be less than the minimum wage. Wage  
20 Order 5, § 5 establishes a guarantee of at least partial compensation for employees who report to  
21 work expecting to work a specified number of hours, and who are deprived of that amount because  
22 of inadequate scheduling or lack of proper notice by the employer.

23 37. As alleged herein, Defendants have failed to pay Plaintiff and the Reporting Time  
24 Class required reporting time pay, when Plaintiff and Reporting Time Class members were called  
25 into work for a second shift and/or on the weekend but were not put to work and/or were sent  
26 home after less than half their usual or schedule day's work, in violation of Wage Order 5, § 5  
and Labor Code §§ 204 and 1198.

27 38. The foregoing violations create an entitlement to recovery by Plaintiff and  
28 members of the Reporting Time Class in a civil action for the unpaid amount of reporting time

1 pay, including interest thereon, attorney's fees and costs of suit according to California Labor  
2 Code §§ 204, 218.5, 218.6, and 1198, Civil Code §§ 3287 and 3289, and Code of Civil Procedure  
3 § 1021.5.

4 **FOURTH CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
9 failed in their affirmative obligation to provide all of their non-exempt employees in California,  
10 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods  
11 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite  
12 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members  
13 of the Meal Period Class at their respective regular rates of compensation, in accordance with  
14 California Labor Code §§ 204, 210, 226.7, and 512.

15 41. As a result, Defendants are responsible for paying premium compensation for meal  
16 period violations including interest thereon, statutory penalties, civil penalties, and costs of suit,  
17 pursuant to Labor Code §§ 226.7, 512, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

18 **FIFTH CAUSE OF ACTION**

19 **REST PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 43. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516 and 558 establish  
23 the right of employees to be provided with a rest period of at least ten (10) minutes for each four  
24 (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and  
25 permit Plaintiff and members of the Rest Period Class to take all legally complaint rest periods as  
26 alleged herein, Defendants did not pay these individuals an additional hour of pay at their  
27 respective regular rate for the rest periods that they failed to authorize and permit them to take, as  
28 required by Labor Code § 226.7.

**FAILURE TO REIMBURSE FOR ALL NECESSARY BUSINESS EXPENDITURES  
(AGAINST ALL DEFENDANTS)**

46. 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 her obedience to the directions of the employer.”

47. 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.”

48. Due to Defendants' unlawful policy and practice of requiring employees to use their personal cellular phones for work purposes and failing to compensate employees for the use of their personal cellular phones, Defendants have violated Labor Code § 2802.

49. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages in sums, which will be shown according to proof.

50. Plaintiff and members of the Employee Expense Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

51. 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 and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

**SEVENTH CAUSE OF ACTION**

**WAGE STATEMENT VIOLATIONS**

**(AGAINST ALL DEFENDANTS)**

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

53. 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 members of the Wage Statement Class with accurate and complete, itemized wage statements that included, among other requirements, all hours worked, total gross wages earned, all rates of pay and corresponding number of hours worked, total net wages earned, and the correct name and address of the legal entity that is the employer in violation of Labor Code § 226 *et seq.*

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

55. 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.*

**EIGHTH CAUSE OF ACTION**

**WAITING TIME PENALTIES**

**(AGAINST ALL DEFENDANTS)**

56. Plaintiff re-alleges and incorporates all previous paragraphs.

57. 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

1 notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her  
2 intent to quit, said employee's wages become due and payable no later than 72 hours upon said  
3 employee's last date of employment.

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

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

17 **NINTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

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

21 61. Defendants have engaged and continue to engage in unfair and/or unlawful  
22 business practices in California in violation of California Business and Professions Code § 17200  
23 *et seq.*, by: (a) failing to pay Plaintiff and members of the Minimum Wage Class all minimum  
24 wages owed; (b) failing to pay Plaintiff and members of the Overtime Class all overtime wages  
25 owed; (c) failing to pay Plaintiff and members of the Reporting Time Class all reporting time pay;  
26 (d) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to  
27 which they are entitled, and failing to pay them meal period premium payments; (e) failing to  
28 authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they  
are entitled, and failing to pay them rest period premium payments; (f) failing to reimburse the

Employee expense Class for all necessary business expenditures; (g) failing to issue accurate and itemized wage statements to the Wage Statement Class; and (h) failing to pay the Waiting Time Class all final wages at the time of separation from employment.

62. 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.

63. 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.

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

65. 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.

#### **TENTH CAUSE OF ACTION**

#### **PRIVATE ATTORNEYS GENERAL ACT (AGAINST ALL DEFENDANTS)**

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

67. 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

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

- 12 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum  
13 Wage Class, and other aggrieved employees in violation of Labor Code §§  
14 1182.12, 1194, 1194.2, and 1197;
- 15 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all  
16 earned overtime compensation in violation of Labor Code §§ 204, 510, 1194, and  
17 1198;
- 18 c. Failing to pay Plaintiff, the Reporting Time Class, and other aggrieved employees  
19 all reporting time pay in violation of Labor Code §§ 204 and 1198;
- 20 d. Failing to provide all legally required meal periods, and failure to pay meal period  
21 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved  
22 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,  
23 512, 558, and 1198;
- 24 e. Failing to authorize and permit all legally required rest periods, and failure to pay  
25 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved  
26 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,  
27 516, 558, and 1198;
- 28 f. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved  
employees for all necessary work expenses incurred in violation of Labor Code §

2802;

g. Failing to pay Plaintiff, the Waiting Class, and other aggrieved employees for all sick pay at their respective regular rates of pay in violation of Labor Code §§ 246, 558, and 1198;

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

i. 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; and

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

68. On October 24, 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 67 (a)-(j). 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.

69. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

70. 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).

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**PRAYER**

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
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 payment of reporting time pay according to proof, pursuant to Labor Code §§ 204 and 1198 and Wage Order 5, § 5;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et seq.*;
11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
12. Upon the Ninth Cause of Action, for 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.*;
13. Upon the Tenth 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 67 (a)-(j);

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

15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, 2802(c), and 2699(g); and Code of Civil Procedure § 1021.5; and

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

Dated: December 29, 2023  
Respectfully submitted,  
HAINES LAW GROUP, APC

By:

  
Paul K. Haines  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

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

Dated: December 29, 2023  
Respectfully submitted,  
HAINES LAW GROUP, APC

By:

  
Paul K. Haines  
Attorneys for Plaintiff