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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENITO

ERIC ECHEVERRIA, an individual and on
behalf of all others similarly situated;

Plaintiff,

vs.

FIRECLAY TILE, INC., a Delaware
corporation; and DOES 1 through 50,

Defendants.

Case No.: CU-23-00249

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) OVERTIME WAGE VIOLATIONS
(LABOR CODE §§ 204, 510, 1194,
1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) WAGE STATEMENT PENALTIES
(LABOR CODE § 226);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE § 2802);**
- (8) UNFAIR COMPETITION (BUS &
PROF CODE §§ 17200, *et seq.*); and**
- (9) CIVIL PENALTIES UNDER THE
CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698, *et seq.*)**

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC ECHEVERRIA (“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 FIRECLAY TILE, INC., a Delaware corporation, and DOES 1 to
4 50 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194,
9 1194.2, 1197, 1198, 2802, 2698, *et seq.*, and Industrial Welfare Commission (“IWC”) Wage Order
10 1-2001 (“Wage Order 1”), in addition to seeking injunctive relief, declaratory relief, and restitution.
11 This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the Labor Code because the amount in controversy
13 exceeds \$25,000.

14 2. Venue is proper in this judicial district because Defendants maintain offices, have
15 agents, and/or transact business in the State of California, including San Benito County, and some
16 of the acts and omissions complained of herein occurred in San Benito County. Furthermore,
17 Plaintiff was employed by Defendants within San Benito County.

18 **PARTIES**

19 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
20 eighteen (18) and is a California resident. Within the statute of limitations periods applicable to
21 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee.
22 Plaintiff was, and is, a victim of Defendants’ policies, practices, and/or customs complained of
23 herein and has been deprived of the rights guaranteed by Business and Professions Code § 17200, *et*
24 *seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
25 1198, 2802, 2698, *et seq.*, and Wage Order 1.

26 4. Plaintiff is informed and believes, and based thereon alleges, that during the
27 applicable statute of limitations for each cause of action pled herein and continuing to the present,
28

1 Defendants engaged in, and continue to engage in, business, and employed Plaintiff and other,
2 similarly-situated non-exempt employees within San Benito County, and the State of California
3 and, therefore, were (and are) doing business in San Benito County and the State of California.

4 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
7 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
8 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
9 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
10 and proximately caused Plaintiff, the Classes (as defined below), and Aggrieved Employees (as
11 defined below) to be subject to the unlawful employment practices, wrongs, injuries, and damages
12 complained of herein.

13 6. At all times herein mentioned, each of said Defendants participated in the doing of
14 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
15 Defendants, and each of them, were the agents, servants, and employees of each of the other
16 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
17 within the course and scope of said agency and employment.

18 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
20 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
21 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
22 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
23 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

24 8. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
26 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

27 9. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged.

2 **FACTUAL ALLEGATIONS**

3 10. Defendants own and operate an architectural tile manufacturing company in Aromas,
4 California with showrooms in San Francisco and Berkeley. Defendants employed Plaintiff as an
5 hourly-paid, non-exempt employee from approximately October 2019 to November 6, 2023 as a
6 production assistant at its Aromas facility.

7 11. Throughout Plaintiff's employment with Defendants, Defendants' timekeeping
8 and/or payroll policies and practices resulted in Plaintiff and other non-exempt employees not being
9 compensated for all hours actually worked. Plaintiff and other non-exempt employees regularly
10 worked more than eight hours in a workday, 40 hours in a workweek, or seventh consecutive days
11 in a single workweek. Upon information and belief, Defendants required Plaintiff and other non-
12 exempt employees to perform work before their scheduled shifts, after their scheduled shifts, and/or
13 during off-the-clock meal breaks, including unlawful rounding of time punches, time spent finding
14 an operating time clock station to clock in and out of their shifts and meal periods, and afterhours
15 communications regarding their production, and failed to compensate aggrieved employees for all
16 time they actually worked.. Upon information and belief, Defendants also failed to incorporate
17 multiple rates of pay and/or all non-discretionary remuneration, including bonuses, into the regular
18 rate of pay. As a result, Plaintiff and other non-exempt employees were not compensated for all
19 earned minimum and overtime wages.

20 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
21 legally compliant meal periods due to Defendants' meal period policies/practices, which have
22 frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
23 and/or missed meal periods. Upon information and belief, Plaintiff and other non-exempt
24 employees were not able to take their legally compliant meal breaks due to work demands imposed
25 by Defendants. Defendants also failed to provide Plaintiff and other non-exempt employees with
26 second meal period when they worked more than 10 hours in a shift. Upon information and belief,
27 Defendants do not keep accurate records of Plaintiff's and other non-exempt employees' hours
28 worked, including accurate time records showing when employees take their meal periods. On those

1 occasions when Plaintiff and other non-exempt employees were not provided with all legally
2 compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff and
3 other non-exempt employees with the required meal period premium(s) for each workday there was
4 a meal period violation as mandated by Labor Code § 226.7. Upon information and belief,
5 Defendants maintained no mechanism for the payment of meal period premium payments as
6 required by Labor Code § 226.7 in the event that a legally compliant meal period was not provided
7 to their non-exempt employees. Alternatively, Defendants failed to incorporate multiple rates of pay
8 and/or all non-discretionary remuneration, including bonuses, into the regular rate of compensation.

9 13. Plaintiff and other non-exempt employees were not authorized and permitted to take
10 all required rest periods due to Defendants' unlawful rest period policies/practices, which failed to
11 authorize and permit a net 10-minute rest period for every four hours worked, or major fraction
12 thereof. Plaintiff and other non-exempt employees were not able to take their legally compliant rest
13 breaks due to work demands imposed by Defendants. Additionally, although Plaintiff and other
14 non-exempt employees occasionally worked shifts in excess of 10 hours, Plaintiff and other non-
15 exempt employees were not authorized and permitted a third rest period during shifts in excess of
16 10 hours. On those occasions when Plaintiff and other non-exempt employees were not authorized
17 and permitted to take all legally compliant rest periods to which they were entitled, Defendants
18 failed to compensate them with the required rest period premium(s) for each workday there was a
19 rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants
20 maintained no mechanism for the payment of rest period premium payments as required by Labor
21 Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted to
22 their non-exempt employees.

23 14. Additionally, upon information and belief, Defendants violated Labor Code § 246 by
24 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration into the paid
25 sick leave pay rate.

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27 15. As a result of Defendants' failure to pay all minimum and overtime wages, failure to
28 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as

1 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage
2 statements to Plaintiff and other non-exempt employees. Defendants' wage statements also failed to
3 state the name and address of the legal entity that is the employer. As a further result of Defendants'
4 failure to pay all minimum and overtime wages, sick leave wages, and meal and rest period
5 premium wages, Defendants failed to timely pay all final wages to Plaintiff and former non-exempt
6 employees upon their separation of employment from Defendants.

7 16. Additionally, Defendants required Plaintiff and other non-exempt employees to use
8 their personal cellphones to communicate about their work during and after their shifts. Despite
9 requiring employees to incur these necessary business expenses, Defendants failed to reimburse
10 Plaintiff and other non-exempt employees for the cost of their personal cellphones.

11 17. Labor Code § 1198 provides: "The employment of any employee ... under conditions
12 of labor prohibited by the [Industrial Wage Orders] is unlawful." Section 15 of the applicable Wage
13 Order provide: "(A) The temperature maintained in each work area shall provide reasonable
14 comfort consistent with industry-wide standards for the nature of the process and the work
15 performed. (B) If excessive heat or humidity is created by the work process, the employer shall take
16 all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
17 comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated
18 room shall be provided to which employees may retire for warmth, and such room shall be
19 maintained at not less than 68° F. (C) A temperature of not less than 68° F shall be maintained in
20 the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy
21 guidelines shall prevail over any conflicting provision of this section." California law requires an
22 employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, §3203.)
23 Labor Code section 6720 required the California Division of Occupational Safety and Health
24 ("Cal/OSHA") to propose an indoor heat illness standard by January 1, 2019. (Lab. Code, § 6720.)
25 Cal/OSHA's draft standard applies its proposed regulations to "all indoor work areas where the
26 temperature equals or exceeds 82 degrees Fahrenheit when employees are present." During the
27 relevant time period, Defendants failed to provide Plaintiff and other non-exempt employees who
28 worked at Defendants' Aromas facility with reasonable comfort by maintaining the indoor

1 temperature within the range of industry standards by, inter alia, providing adequate heating, air
2 conditioning, and/or ventilation and failed to maintain a temperature of not less than 68° F in toilet
3 rooms and/or breakrooms for Plaintiff and other aggrieved employees.

4 **CLASS ACTION ALLEGATIONS**

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

- 7 a. Minimum Wage Class: All current and former non-exempt employees of Defendants
8 in the State of California who were subject to Defendants' timekeeping and payroll
9 policies and/or practices, during the four years immediately preceding the filing of
10 this action through the present.
- 11 b. Overtime Class: All current and former non-exempt employees of Defendants in the
12 State of California who worked more than eight hours per day and/or 40 hours per
13 week and were subject to Defendants' timekeeping policies and/or practices, during
14 the four years immediately preceding the filing of this action through the present.
- 15 c. Meal Period Class: All current and former non-exempt employees of Defendants in
16 the State of California who: (i) worked at least one shift in excess of 5.0 hours;
17 and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years
18 immediately preceding the filing of this action through the present.
- 19 d. Rest Period Class: All current and former non-exempt employees of Defendants in
20 the State of California who worked at least one shift of 3.5 or more hours, during the
21 four years immediately preceding the filing of this action through the present.
- 22 e. Wage Statement Class: All current and former non-exempt employees of Defendants
23 in the State of California who received a wage statement, during the one year
24 immediately preceding the filing of this action through the present.
- 25 f. Waiting Time Penalty Class: All of Defendants' formerly employed members of the
26 Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class
27 during the three years immediately preceding the filing of this action through the
28 present.

1 g. Expense Reimbursement Class: All current and former non-exempt employees of
2 Defendants in the State of California who were not reimbursed for all necessary
3 business expenses, during the four years immediately preceding the filing of this
4 action through the present.

5 19. **Numerosity/Ascertainability**: The members of the Classes are so numerous that
6 joinder of all members would be impractical, if not impossible. The membership of the Classes is
7 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
8 greater than 50 individuals. The identity of such membership is readily ascertainable via inspection
9 of Defendants' employment records, including payroll records.

10 20. **Common Questions of Law and Fact Predominate/Well-Defined Community of**
11 **Interest**: There are predominant common questions of law and fact as to Plaintiff and members of
12 the Classes, which predominate over questions affecting only individual members including,
13 without limitation to:

- 14 a. Whether Defendants properly paid all overtime wages to members of the Overtime
15 Class;
- 16 b. Whether Defendants paid at least the minimum wage for all hours worked to
17 members of the Minimum Wage Class;
- 18 c. Whether Defendants provided all legally compliant meal periods or paid meal period
19 premium wages due to members of the Meal Period Class pursuant to Labor Code §§
20 226.7 and 512;
- 21 d. Whether Defendants authorized and permitted all legally compliant rest periods or
22 paid all rest period premium wages due to members of the Rest Period Class
23 pursuant to Labor Code §§ 226.7 and 516;
- 24 e. Whether Defendants timely paid all final wages to members of the Waiting Time
25 Class at the time of their separation of employment pursuant to Labor Code §§ 201
26 and 202;
- 27 f. Whether Defendants furnished legally compliant wage statements to members of the
28 Wage Statement Class pursuant to Labor Code § 226; and

1 g. Whether Defendants reimbursed members of the Expense Reimbursement Class for
2 all necessary business expenses pursuant to Labor Code § 2802.

3 These common questions of law and fact set forth above are numerous and substantial and
4 stem from Defendants' policies and/or practices applicable to each individual class member. As
5 such, the common questions predominate over individual questions concerning each individual
6 class member's showing as to their eligibility for recovery or as to the amount of their damages.

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

15 22. **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, Plaintiff's
17 attorneys are ready, willing and able to fully and adequately represent the members of the Classes
18 and Plaintiff. Plaintiff's attorneys have litigated numerous wage-and-hour class actions in state and
19 federal courts in the past and are committed to vigorously prosecuting this action on behalf of the
20 members of the Classes.

21 23. **Superiority:** The Labor Code is broadly remedial in nature and serves an important
22 public interest in establishing minimum working conditions and standards in California. These laws
23 and labor standards protect the average working employee from exploitation by employers who
24 have the responsibility to follow the laws and who may seek to take advantage of superior economic
25 and bargaining power in setting onerous terms and conditions of employment. The nature of this
26 action and the format of laws available to Plaintiff and members of the Classes make the class
27 action format a particularly efficient and appropriate procedure to redress the violations alleged
28 herein. If each employee were required to file an individual lawsuit, Defendants would necessarily

1 gain an unconscionable advantage since they would be able to exploit and overwhelm the limited
2 resources of each individual plaintiff with their vastly superior financial and legal resources.

3 24. Moreover, requiring each member of the Class(es) to pursue an individual remedy
4 would also discourage the assertion of lawful claims by employees who would be disinclined to file
5 an action against their former and/or current employer for real and justifiable fear of retaliation and
6 permanent damages to their careers at subsequent employment. The claims of the individual
7 members of the Class are not sufficiently large to warrant vigorous individual prosecution
8 considering all of the concomitant costs and expenses attending hereto.

9 25. Furthermore, the prosecution of separate actions by the individual class members,
10 even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
11 with respect to the individual class members against Defendants herein; and which would establish
12 potentially incompatible standards of conduct for Defendants; and/or legal determinations with
13 respect to individual class members which would, as a practical matter, be dispositive of the interest
14 of the other class members not parties to adjudications or which would substantially impair or
15 impede the ability of the class members to protect their interests. As such, the Classes identified
16 hereinabove are maintainable as classes under § 382 of the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **MINIMUM WAGE VIOLATIONS**

19 **(Against All Defendants)**

20 26. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
21 fully set forth herein.

22 27. Labor Code §§ 1182.12, 1197, and Wage Order 1, § 4 establish the right of
23 employees to be paid minimum wages for all hours worked, in amounts set by state or local law.
24 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
25 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
26 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
27 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its
28 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 Labor Code and
3 Wage Order 1.

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

9 29. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
10 members of the Minimum Wage Class seek recovery of the balance of unpaid wages, including
11 interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§
12 218.6, 558, 1194, 1194.2, and 1199, Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and
13 3289.

14 **SECOND CAUSE OF ACTION**
15 **OVERTIME WAGE VIOLATIONS**
16 **(Against All Defendants)**

17 30. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
18 fully set forth herein.

19 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, 1198, and
20 Wage Order 1, § 3, which provide that non-exempt employees are entitled to all overtime wages
21 and 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 32. At all times relevant herein, Defendants were required to properly compensate non-
24 exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours
25 worked pursuant to Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer
26 to pay an employee one and one-half (1½) times and two times the employee's regular rate of pay
27 for overtime and double time hours work. Defendants caused Plaintiff and members of the Overtime
28 Class to work overtime hours but failed to compensate these employees for all overtime hours

1 actually worked.

2 33. As a consequence of Defendants' non-payment of overtime wages, Plaintiff and
3 members of the Overtime Class seek recovery of the balance of unpaid overtime wages, including
4 interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§
5 204, 210, 216, 218.6, 510, 1194, and 1198; Code of Civil Procedure § 1021.5; and Civil Code §§
6 3287 and 3289.

7 **THIRD CAUSE OF ACTION**

8 **MEAL PERIOD VIOLATIONS**

9 **(Against All Defendants)**

10 34. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
11 fully set forth herein.

12 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
13 in their affirmative obligation to provide all of their non-exempt employees in California, including
14 Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in
15 accordance with the mandates of the Labor Code and Wage Order 1, § 11.

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

19 37. As a consequence of Defendants' unlawful meal period practices, Plaintiff and
20 members of the Meal Period Class seek recovery of unpaid premium wages for meal period
21 violations including interest thereon, statutory penalties, and costs of suit, pursuant to Labor Code
22 §§ 226.7, 512, 558, Wage Order 1, and Civil Code §§ 3287 and 3289.

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27 **FOURTH CAUSE OF ACTION**

1 **REST PERIOD VIOLATIONS**

2 **(Against All Defendants)**

3 38. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
4 fully set forth herein.

5 39. Labor Code §§ 226.7, 516, 558, and Wage Order 1, § 12 and establish the right of
6 employees to be provided with a rest period of at least 10 minutes for each four-hour period
7 worked, or major fraction thereof. Plaintiff is informed and believes, and based thereon alleges, that
8 despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class
9 to take all legally compliant rest periods as alleged herein, Defendants did not pay these individuals
10 an additional hour of pay at their respective regular rate for the rest periods that they failed to
11 authorize and permit them to take, as required by Labor Code § 226.7.

12 40. As a consequence of Defendants' unlawful rest period practices, Plaintiff and
13 members of the Rest Period Class seek recovery of unpaid premium wages for rest period violations
14 including interest thereon, statutory penalties, and costs of suit, statutory penalties, attorneys' fees,
15 and costs of suit according to Labor Code §§ 226.7, 516, 558, Wage Order 1, and Civil Code §§
16 3287 and 3289.

17 **FIFTH CAUSE OF ACTION**

18 **WAGE STATEMENT PENALTIES**

19 **(Against All Defendants)**

20 41. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
21 fully set forth herein.

22 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
24 and members of the Wage Statement Class with accurate and complete, itemized wage statements
25 that included, among other requirements, all hours worked, total gross wages earned, all rates of pay
26 and corresponding number of hours worked, total net wages earned, the inclusive dates of the pay
27 period, and/or the correct name and address of the legal entity that is the employer in violation of
28 Labor Code § 226.

43. 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 payroll data.

44. As a consequence of Defendants' unlawful wage statement practices, Plaintiff and members of the Wage Statement Class seek damages and/or statutory penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

45. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

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

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including unpaid minimum and overtime wages as well as unpaid meal and rest period premium wages.

48. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-202.

49. Defendants' failure to pay all final wages was willful within the meaning of Labor

1 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
2 Time Class their earned wages upon separation from employment results in continued payment of
3 daily wages up to thirty days from the time the wages were due.

4 50. As a consequence of Defendants' unlawful practices, Plaintiff and members of the
5 Waiting Time Class seek statutory penalties, and costs of suit according to California Labor Code §
6 203.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **(Against All Defendants)**

10 51. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
11 fully set forth herein.

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

16 53. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and
17 members of the Expense Reimbursement Class all necessary business expenses they incurred in the
18 performance of their job duties.

19 54. As a consequence of Defendants' unlawful practices, Plaintiff and members of the
20 class seek recovery of unreimbursed business expenses, including interest thereon, reasonable
21 attorneys' fees, and costs of suit pursuant to Labor Code § 2802.

22 **EIGHTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Against All Defendants)**

25 55. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
26 fully set forth herein.

27 56. Defendants have engaged and continue to engage in unfair and/or unlawful business
28 practices in California in violation of Business and Professions Code § 17200, *et seq.*, by:

- 1 a. failing to pay Plaintiff and members of the Minimum Wage Class all minimum
2 wages due;
- 3 b. failing to pay Plaintiff and members of the Overtime Class all overtime wages due;
- 4 c. failing to provide Plaintiff and members of the Meal Period Class with all meal
5 periods to which they are entitled, and failing to pay them all meal period premium
6 wages due;
- 7 d. failing to authorize and permit Plaintiff and members of the Rest Period Class all rest
8 periods to which they are entitled, and failing to pay them all rest period premium
9 wages due;
- 10 e. failing to issue accurate and itemized wage statements to Plaintiff and members of
11 the Wage Statement Class;
- 12 f. failing to timely pay all final wages to Plaintiff and members of the Waiting Time
13 Penalty Class; and
- 14 g. failing to reimburse all necessary business expenses to Plaintiff and members of the
15 Expense Reimbursement Class.

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

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

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

27 ///

28 **NINTH CAUSE OF ACTION**

1 **PRIVATE ATTORNEYS GENERAL ACT**

2 **(Against All Defendants)**

3 60. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
4 fully set forth herein.

5 61. Plaintiff, an “aggrieved employee” within the meaning of Labor Code §§ 2698, *et*
6 *seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved
7 Employees”), brings this representative action against Defendants to recover the civil penalties due
8 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
9 to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
10 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
11 intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each
12 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
13 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
14 \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code §
15 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each
16 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to
17 Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as
18 waiting time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and
19 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
20 Code for which no civil penalty is specifically provided, based on the following Labor Code
21 violations:

- 22 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
23 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 24 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
25 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 26 c. Failing to provide all legally required meal periods, and failure to pay meal period
27 premium wages, to Aggrieved Employees at the regular rate of compensation in
28 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 Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Aggrieved Employees at the time of separation in violation of Labor Code §§ 201-202;
- g. Failure to reimburse Aggrieved Employees for all necessary business expenses in violation of Labor Code § 2802;
- h. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor Code § 246;
- i. Failing to pay Aggrieved Employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- j. Failing to provide Aggrieved Employees with reasonable comfort by maintaining indoor temperatures required by the applicable Wage Order in violation for Labor Code § 1198; and
- k. Failing to maintain accurate records on behalf of Aggrieved Employees in violation of Labor Code §§ 1174 and 1198.

62. On or about November 3, 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 Labor Code and Plaintiff’s intent to bring a claim for civil penalties under Labor Code §§ 2698, *et seq.* with respect to the violations of the Labor Code identified in the preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Defendants have not cured any curable violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

63. Plaintiff has incurred attorneys’ fees and costs, which Plaintiff is entitled to receive

1 under California Labor Code § 2699(g).

2 **PRAYER FOR RELIEF**

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

- 5 1. For an order certifying the proposed Classes;
- 6 2. For an order appointing Plaintiff as representative of the Classes;
- 7 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 8 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
9 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
10 1197;
- 11 5. Upon the Second Cause of Action, for payment of overtime wages and penalties
12 according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 13 6. Upon the Third Cause of Action, for meal period premium wages according to proof
14 pursuant to Labor Code §§ 226.7, 512, and 558;
- 15 7. Upon the Fourth Cause of Action, for rest period premium wages according to proof
16 pursuant to Labor Code §§ 226.7, 516, and 558;
- 17 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
18 226;
- 19 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
20 203
- 21 10. Upon the Seventh Cause of Action, for unreimbursed business expenses according to
22 proof pursuant to Labor Code § 2802;
- 23 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Business and Professions Code §§ 17200, *et*
26 *seq.*;
- 27 ///
- 28 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other Aggrieved

1 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
2 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
3 pay each employee and \$200 for each subsequent violation or willful or intentional violation
4 pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the
5 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
6 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
7 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee
8 per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
9 pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a
10 civil penalty in an amount not exceeding 30 days per former employee as waiting time under the
11 terms of Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each
12 subsequent violation per employee per pay period for those violations of the Labor Code for which
13 no civil penalty is specifically provided;

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

16 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
17 218.5, 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

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

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a trial by jury on all claims.

21
22 DATED: January 29, 2024

JUSTICE FOR WORKERS, P.C.

23
24 By: 

25 William C. Sung, Esq.

26 Tiffany L. Luu, Esq.

27 Attorneys for Plaintiff ERIC ECHEVERRIA
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