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FILED
Superior Court of California
County of Los Angeles

04/02/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE MORAN, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

ARACA MERCHANDISE L.P., a New York
Limited Partnership; and DOES 1 through 100,

Defendants.

Case No.: 24STCV02003

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

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

**(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Jose Moran (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendant Araca Merchandise L.P., a New York Limited Partnership, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

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

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los Angeles. Defendants transact business within the County of Los Angeles and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within Los Angeles County. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as

1 a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
2 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
3 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
4 1198, 2802, 2804, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.*
5 ("Unfair Competition Law"), and Wage Order 7, which sets the employment standards for the
6 mercantile industry.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing of this action and continuing to the present, Defendants did (and
9 continue to do) business within the County of Los Angeles and the State of California by operating
10 a company specializing in theatrical production and merchandising promotional products and
11 therefore, were (and are) doing business in the County of Los Angeles and the State of California.

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

20 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
22 Classes.

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

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate an international company specializing in theatrical production
10 and merchandising promotional products. Plaintiff was initially hired in 2015 by Defendants as a
11 non-exempt "Assistant Press Operator" in their Receiving/Screen Printing Department. Plaintiff's
12 primary job duties included unloading trucks of merchandise, making orders, and painting.

13 10. During Plaintiff's employment with Defendants, Defendants failed to compensate
14 Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid
15 minimum wages and additional unpaid overtime wages. Specifically, Defendants frequently
16 contacted Plaintiff and other non-exempt employees on their personal cellular phones with
17 various work-related demands during their meal periods, prior to and after their work shifts while
18 off-the-clock. Since Plaintiff and other non-exempt employees were messaged off-the-clock with
19 information necessary to perform their job duties, Defendants were required to compensate
20 Plaintiff and other non-exempt employees for this time. In instances where their meal periods
21 were interrupted for work purposes, Plaintiff and other non-exempt employees were not
22 compensated for the time they spent communicating with Defendants. As a result, Defendants
23 have failed to pay Plaintiff and other non-exempt employees all minimum and overtime wages
24 earned for performing off-the-clock work during their purported meal periods. *See Kaanaana v.*
25 *Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 808 (holding that requiring employees
26 to work through any portion of meal period entitles them to payment for actual time worked as
27 well as an additional hour of pay for the meal period premium).
28

1 11. Defendants also rounded and/or time-shaved Plaintiff's and other non-exempt
2 employees' hours in quarter hour increments, which resulted in Plaintiff and other non-exempt
3 employees not being compensated for all hours actually worked. Due to Defendants' timekeeping
4 policies and practices that fail to compensate for all hours worked, Plaintiff and other non-exempt
5 employees were deprived of all required minimum wages. *See Camp v. Home Depot U.S.A.,*
6 *Inc.*, (2022) 84 Cal.App.5th 638, 654 ("[I]f an employer, as in this case, can capture and has
7 captured the exact amount of time an employee has worked during a shift, the employer must pay
8 the employee for "all the time" worked."). Further, on occasions when Plaintiff and other non-
9 exempt employees worked over eight hours in a day and/or forty hours in a workweek, this
10 process of time-shaving or rounding also deprived them of all overtime wages owed. As such,
11 Plaintiff and other non-exempt employees were not credited with all hours actually worked and
12 were not paid all minimum and overtime wages earned.

13
14 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
15 legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that
16 failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the end of the
17 fifth hour of work and **any** second duty-free, 30-minute meal periods when they worked shifts in
18 excess of ten hours. As mentioned, Defendants failed to provide duty-free meal periods since they
19 frequently interrupted Plaintiff and other non-exempt employees with work-related calls during
20 their purported meal periods. Moreover, even when Plaintiff was permitted to take a meal period,
21 such meal periods were often shorter than a "net" of 30-minutes as required by law for the same
22 reasons discussed below pertaining to rest periods. Further, Defendants failed to schedule and
23 provide any second meal periods, even though Plaintiff and other non-exempt employees
24 frequently worked shifts over ten hours. As a result, Plaintiff and other non-exempt employees
25 did not receive an additional hour of premium pay at their respective regular rates of pay for each
26 workday in which a meal period violation occurred, as required by Labor Code § 226.7. Upon
27 information and belief, Defendants failed to maintain pay codes for the payment of meal period
28 premium payments as required by Labor Code section 226.7.

1 13. Defendants regularly failed to authorize and permit Plaintiff and other non-exempt
2 employees to take *any* duty-free 10-minute rest periods for every four hours worked, or major
3 fraction thereof, due to Defendants’ unlawful rest period policies/practices. As with meal periods,
4 Plaintiff and other non-exempt were frequently not authorized or permitted to take rest periods
5 due to work-related demands. In the event Plaintiff and other non-exempt employees were able
6 to take their rest periods, Defendants failed to authorize and permit rest periods for a “net” of 10
7 minutes. Under California law, Defendants are required to authorize and permit a “net” rest period
8 of 10-minutes that begins when the employee reaches a rest area away from his or her workstation
9 and must be uninterrupted during the duration of the rest period. *See e.g.*, Division of Labor
10 Standards Enforcement Manual (“DLSE Manual”) §45.3.3; *Vaquero v. Stoneledge Furniture*
11 *LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that
12 “the rest period begins when the employee reaches an area away from the workstation that is
13 appropriate for rest”); *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260
14 (“[D]uring required rest periods, employers must relieve their employees of all duties and
15 relinquish any control over how employees spend their break time”). Specifically, on the rare
16 occasions employees were able to take a rest period, Defendants only authorized and permitted
17 Plaintiff and other non-exempt employees to take rest periods of exactly 10 minutes in length,
18 beginning the moment they left their workstation and requiring Plaintiff and other non-exempt
19 employees to return to their workstations by the completion of the 10-minutes. However, after
20 leaving their workstations, Plaintiff and other non-exempt employees were required to walk to
21 and from the breakroom, a distance of more than approximately 30 feet, thereby shortening their
22 purported rest periods to less than 10 minutes “net” in the designated rest area away from the
23 employee’s workstation. Further, on occasions when Plaintiff and other non-exempt employees
24 were not authorized and permitted to take all lawful rest periods to which they were entitled,
25 Defendants failed to pay Plaintiff and other non-exempt employees an additional hour of premium
26 pay at their respective regular rates of pay for each workday in which a rest period violation
27 occurred, as required by Labor Code section 226.7. Upon information and belief, Defendants
28

1 failed to maintain pay codes for the payment of rest period premium payments as required by
2 Labor Code section 226.7.

3 14. During their respective employments with Defendants, Plaintiff and other non-
4 exempt employees were not reimbursed for all necessary business expenses incurred pursuant to
5 Labor Code § 2802. As mentioned, Defendants required Plaintiff and other non-exempt
6 employees to use their personal cellular phones to communicate with Defendants for work-related
7 purposes but did not reimburse Plaintiff and other non-exempt employees for a reasonable portion
8 of their monthly cellular phone bills. Despite requiring Plaintiff and other non-exempt employees
9 to utilize their personal cellular phones for work purposes, Defendants failed to reimburse their
10 non-exempt employees for all necessary business expenses associated with using their personal
11 cellular phones, in violation of Labor Code § 2802. Defendants were also mandated by *Cochran*
12 *v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, to reimburse Plaintiff for a
13 reasonable portion of his cellular phone expenses.

14 15. As a result of Defendants' failure to pay all overtime wages, minimum wages,
15 meal and rest period premium wages owed, Defendants also maintained inaccurate payroll
16 records, issued inaccurate wage statements to Plaintiff and other non-exempt employees, and
17 failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their
18 respective separations from employment.

19 16. On approximately November 10, 2023, Plaintiff submitted a written personnel and
20 payroll records request to Defendants. Defendants failed to respond to Plaintiff's records request
21 within 21 days from the date of the request, in violation of Labor Code § 226(c).

22 **CLASS ACTION ALLEGATIONS**

23 17. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
24 following Classes pursuant to section 382 of the Code of Civil Procedure:

- 25 a. The Overtime Class consists of consists of all of Defendants' current and former
26 non-exempt employees in California who worked more than 8.0 hours per day
27 and/or 40.0 hours per workweek and were subject to Defendants' timekeeping
28

policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.

b. 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 for non-exempt employees, during the four years immediately preceding the filing of this action 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 in excess of 5.0 hours during the four years immediately preceding the filing of this action 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, during the four years immediately preceding the filing of this action through the present.

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

f. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present.

g. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who separated their employment with Defendants during the three years immediately preceding the filing of this action through the present.

18. **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

is 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.

19. **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 non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants lawfully paid all premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- iv. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- v. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code section 226.7;
- vi. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804;
- vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226; and
- viii. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

20. **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, such as Defendants' uniform
3 overtime and minimum wage, meal and rest period policies/practices, and reimbursement
4 policies/practices. As such, common questions predominate over individual questions concerning
5 each individual class member's showing as to their eligibility for recovery or as to the amount of
6 their damages.

7 21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
8 Plaintiff was employed by Defendants as a non-exempt employee in California during the
9 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
10 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum
11 wages owed, was not provided all required meal periods, was not authorized and permitted to take
12 all required rest periods, was not reimbursed for all necessary business expenses, and did not
13 receive accurate wage statements or all final wages owed at the time of his separation from
14 employment.

15 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
16 steps 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-
19 and-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 23. **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 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. As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

26. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee

1 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
2 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage
3 Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of
4 pay for work in excess of 12 hours each workday and/or for work in excess of 8 hours on the
5 seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime
6 hours, but did not compensate Plaintiff or members of the Overtime Class at one and one-half
7 (1½) times their regular rate of pay for such hours.

8 27. At all times relevant herein, Defendants caused Plaintiff and members of the
9 Overtime Class to work overtime hours but did not compensate Plaintiff or members of the
10 Overtime Class at one and one-half times their regular rate of pay for such hours.

11 28. The foregoing policies and practices are unlawful and create entitlement to
12 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
13 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
14 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
15 7, and Code of Civil Procedure § 1021.5.

16 **SECOND CAUSE OF ACTION**

17 **MINIMUM WAGE VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 30. Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
21 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
22 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
23 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
24 attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
25 wages and interest accrued thereon.

26 31. At all relevant times herein, Defendants failed to conform their pay practices to
27 the requirements of the law. This unlawful conduct includes but is not limited to all hours they
28 were subject to Defendants’ control. Accordingly, Plaintiff and members of the Minimum Wage

1 Class were not compensated for all hours actually worked as required by the California Labor
2 Code and Wage Order 7.

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

8 33. As a direct and proximate result of Defendants' unlawful conduct as alleged
9 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including, but
10 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
11 entitled to recover economic and statutory damages and penalties and other appropriate relief as
12 a result of Defendants' violations of the California Labor Code and Wage Order 7.

13 34. Defendants' timekeeping policies/practices are unlawful and create an entitlement
14 to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid
15 amount of minimum wages, liquidated damages, including interest thereon, statutory penalties,
16 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210,
17 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 failed in their affirmative obligation to provide all of their non-exempt employees in California,
24 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
25 in accordance with the mandates of the California Labor Code and Wage Order 7, § 11, for the
26 reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite
27 Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff
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1 and members of the Meal Period Class at their respective regular rates of pay, in accordance with
2 California Labor Code §§ 226.7 and 512.

3 37. As a result, Defendants are responsible for paying premium compensation for meal
4 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
5 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, and Code of Civil Procedure
6 § 1021.5.

7 **FOURTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

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

11 39. Wage Order 7, § 12 and Labor Code §§ 226.7 and 516 establish the right of
12 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
13 period worked, or major fraction thereof.

14 40. As alleged herein, and due to Defendants' unlawful rest period policies and/or
15 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
16 Class to take all paid rest periods to which they were legally entitled. Despite Defendants'
17 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
18 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
19 California Labor Code § 226.7.

20 41. The foregoing violations create an entitlement to recovery by Plaintiff and
21 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
22 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
23 to Labor Code §§ 226.7, 516, and 558, Wage Order 7, and Code of Civil Procedure § 1021.5.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 ///

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

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

10 45. As alleged herein, due to Defendants’ unlawful reimbursement practices,
11 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
12 necessary business expenses incurred, including, among other things, personal cellular phone
13 usage.

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

18 **SIXTH CAUSE OF ACTION**

19 **WAGE STATEMENT VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 48. 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 the Wage Statement Class with wage statements that complied with the requirements of Labor
25 Code § 226(a).

26 49. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class
27 with compliant wage statements resulted in actual injury, as said failures rendered Plaintiffs
28 unable to unable to readily ascertain the information on their wage statements.

1 50. Defendants' failures create an entitlement to recovery by Plaintiff and members of
2 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
3 Code § 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
4 costs of suit according to California Labor Code § 226 *et. seq.*

5 **SEVENTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(AGAINST ALL DEFENDANTS)**

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

9 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
10 an employer to pay all wages earned immediately at the time of separation from employment in
11 the event the employer discharges the employee, or if the employee provides at least 72 hours of
12 notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of
13 his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon
14 said employee's last date of employment.

15 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
17 at the time of their separation including, among other things, underpaid overtime and minimum
18 wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes,
19 and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue
20 to fail to pay members of the Waiting Time Class all earned wages at the end of employment in
21 a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
22 pay all final wages was willful within the meaning of Labor Code § 203.

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

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1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 56. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all required all overtime
8 and minimum wages owed; meal and rest period premium wages owed; failing to reimburse all
9 necessary business expenses; knowingly failing to furnish complete and accurate, itemized wage
10 statements; and failing to pay all final wages at the time of separation from employment.

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

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

20 59. The acts complained of herein occurred within the last four years immediately
21 preceding the filing this action.

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

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NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

62. 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 and \$200 for each subsequent violation or willful or intentional violation for each failure to pay each employee 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 Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these

employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;

- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
- h. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- i. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

63. On January 24, 2024, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

64. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants'

employees who worked for Defendants in California at any time between January 24, 2023 and the present.

65. 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.

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 compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
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.*;
10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

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1 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
2 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
3 practices declared by this Court to be in violation of California Business and Professions Code §
4 17200 *et seq.*;

5 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
6 aggrieved employees, and the State of California according to proof pursuant to Labor
7 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
8 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
9 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
10 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
11 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
12 (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor
13 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
14 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
15 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
16 employee per pay period for those violations of the Labor Code for which no civil penalty is
17 specifically provided, based on the violations of Labor Code sections cited in Paragraph 62 (a)-
18 (i) above;

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

21 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

23 15. For such other and further relief the Court may deem just and proper.
24

25 Dated: April 2, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: April 2, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

5
6 By:



Fletcher W. Schmidt
Attorneys for Plaintiff