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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

DANIEL MCCABE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SUMMIT ELECTRICAL, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO.:37-2024-00012319-CU-OE-CTL

**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 EXPENSES
(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 Daniel McCabe (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“Complaint”) against Summit Electrical, Inc., a California Corporation; and Does 1 through 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, penalties, and unreimbursed expenses under California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*, and California Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”) in addition to seeking declaratory relief, injunctive relief, and restitution. This Complaint 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 §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the County of San Diego. Defendants own, maintain offices, transact business, have an agent or agents within the County of San Diego, and/or otherwise are found within the County of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of process.

THE 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, residing in the County of San Diego. During the four years immediately preceding the filing of the Complaint in this action, and within the

1 statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
2 employed by Defendants as a non-exempt employee in San Diego County. Plaintiff was, and is,
3 a victim of Defendants' policies and/or practices complained of herein, lost money and/or
4 property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
5 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698
6 *et seq.*, and California Business and Professions Code § 17200 *et. seq.*, and Wage Order 16 which
7 sets employment standards for the construction industry, including for electricians.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
10 continue to do) business within the County of San Diego by operating electrical construction
11 services, and employed Plaintiff and other, similarly situated non-exempt employees within San
12 Diego County and the state of California and, therefore, were (and are) doing business in San
13 Diego County and the State of California.

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

22 6. Plaintiff is informed and believes, and thereon alleges, that all Defendants,
23 however designated whether by real or fictitious name, were and are in some manner responsible
24 for the events, happenings, occurrence and instrumentalities upon and about which these claims
25 are made. At all relevant times mentioned herein, Defendants were and are the employers of
26 Plaintiff and all members of the Classes.

27 7. At all times herein mentioned, each of said Defendants participated in the doing
28 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the

1 Defendants, and each of them, were the agents, servants, and employees of each and every one of
2 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
3 were acting within the course and scope of said agency and employment. Defendants, and each
4 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
5 omissions complained of herein.

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

11 **GENERAL FACTUAL ALLEGATIONS**

12 9. Defendants operate as a commercial electrical sub-contractor in San Diego,
13 California. Plaintiff was employed by Defendants as a non-exempt “Electrical Contractor” from
14 approximately September 2021 to June 2023. Plaintiff’s job duties included reviewing blueprint
15 layouts of job sites, running electrical wires, hanging lights, working on roofs, and other electrical
16 work. Unless otherwise specified, all allegations herein occurred during Plaintiff’s employment
17 with Defendants.

18 10. Defendants failed to compensate Plaintiff and other non-exempt employees for all
19 hours actually worked, resulting in unpaid minimum and overtime wages. Specifically,
20 Defendants maintained handwritten timecards to record employees’ daily hours worked.
21 However, Plaintiff and other non-exempt employees were not permitted to record their actual
22 hours worked during the workday. Instead, Defendants’ supervisors maintained the timecards and
23 ensured that employees were only paid for their scheduled hours. Plaintiff and other non-exempt
24 employees were required to arrive at the job site at least 10 minutes before their scheduled shift
25 time as well as stay after their scheduled shift to clean their work areas. If Plaintiff and other non-
26 exempt employees attempted to leave at their scheduled shift end time, Defendants’ supervisors
27 reprimanded them for packing up too early. When questioned about the unpaid time, Defendants
28 supervisors confirmed that timecards needed to conform to scheduled hours so they would be

uniform and easier for payroll to process. As a result of Defendants' policies/practices of only compensating for scheduled hours, Defendants failed to compensate Plaintiff and other non-exempt employees for all minimum and overtime wages earned.

11. Defendants also failed to pay Plaintiff and other non-exempt employees all overtime wages owed due to Defendants' failure to include various non-discretionary bonuses in the regular rate of pay for overtime purposes. Specifically, Defendants paid Plaintiff and other non-exempt employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation including but not limited to incentive bonuses (hereinafter referred to as "Incentive Pay"). However, when Plaintiff and other non-exempt employees worked overtime in the same pay period that Incentive Pay was earned, Defendants only paid those overtime hours at one and a half times the base hourly rate, not the regular rate of pay. Upon information and belief, Defendants also paid Plaintiff and other non-exempt employees' sick pay at the base hourly rate, instead of the regular rate of pay, resulting in underpaid sick pay earnings as well.

12. Defendants maintained unlawful meal period policies/practices that failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the end of the fifth hour of work. Specifically, Defendants supervisors systematically recorded 30-minute meal periods on employee timecards for each workday, without verifying if Plaintiff and other non-exempt employees actually were provided timely and uninterrupted meal periods. This is despite the fact that Plaintiff and other non-exempt employees were frequently interrupted from their meal periods. For example, employees were regularly required to stop their meal period to unload delivery trucks and would only be able to return to their lunch afterwards. If a delivery occurred prior to starting lunch, Plaintiff and other non-exempt employees were required to delay their meal period until after the delivery was unloaded. This practice regularly led to interrupted meals and meals being provided after the end of the fifth hour of work. Defendants also failed to provide Plaintiff and other non-exempt employees with an additional hour of premium pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7. *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 808 (holding that

1 requiring employees to work through any portion of meal period entitles them to payment for
2 actual time worked as well as an additional hour of pay for the meal period premium).

3 13. Plaintiff and other non-exempt employees were also not authorized and permitted
4 to take a rest period for every 4 hours worked (or major fraction thereof) due to Defendants'
5 unlawful rest period policies/practices. Specifically, even though Plaintiff and non-exempt
6 employees were scheduled for 8-hour shifts, Defendants did not authorize and permit separate
7 rest periods throughout the workday. Instead, Plaintiff and other non-exempt employees were
8 only authorized and permitted to combine their rest periods into a 20-minute rest period, in
9 violation of California law. *See Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027 (holding
10 that in the context of an 8-hour shift with a single meal period, the preferred schedule requires
11 the provision of a rest period in the middle of each "work period" before and after the meal break,
12 and that "a departure from the preferred schedule is permissible only when the departure (1) will
13 not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would
14 be imposed on the employer by implementing the preferred schedule."). As with meal periods,
15 Defendants frequently interrupted Plaintiff and other non-exempt employees during rest periods
16 with work-related tasks. As a result, Defendants failed to authorize and permit duty-free rest
17 periods. Defendant also failed to provide Plaintiff and other non-exempt employees with an
18 additional hour of premium pay for each workday in which a rest period violation occurred, as
19 required by Labor Code § 226.7.

20 14. Plaintiff and other non-exempt employees were not reimbursed for all necessary
21 business expenses. Specifically, Plaintiff and other non-exempt employees used their personal
22 cellular phones to communicate with their co-workers and Defendants' supervisors throughout
23 the workday. However, Defendants failed to pay any portion of employees' monthly cell phone
24 bill. Moreover, Plaintiff and other non-exempt employees were required to purchase and cover
25 repair costs for tools necessary to complete their job duties, including pipe benders, grinders,
26 vacuums, reciprocating saws, drills, impacts, and other basic hand tools, among other items, all
27 without reimbursement. Defendants also did not reimburse Plaintiff and other non-exempt
28 employees for mileage expenses incurred when Defendants required Plaintiff and other non-

1 exempt employees to travel to various job sites during the workday. As such, Defendants failed
2 to reimburse Plaintiff and other non-exempt employees for all necessary business expenses
3 associated with using their personal cellular phones, the purchase of necessary tools, and mileage
4 expenses, in violation of Labor Code § 2802.

5 15. As a result of Defendants' failure to pay all minimum wages, overtime wages, sick
6 pay wages, and meal and rest period premium wages owed, Defendants maintained inaccurate
7 payroll records, and issued inaccurate wage statements and failed to pay all final wages to Plaintiff
8 and other non-exempt employees upon their separation of employment.

9 **CLASS ACTION ALLEGATIONS**

10 16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
11 following Classes pursuant to Code of Civil Procedure § 382:

- 12 a. The Minimum Wage Class consist of all Defendants' current and former non-
13 exempt employees in California who were subject to Defendants' timekeeping
14 policies and/or practices, during the four years immediately preceding the filing of
15 this action through the present.
- 16 b. The Overtime Class consists of all Defendants' current and former non-exempt
17 employees in California who worked more than 8.0 hours per day and/or 40.0
18 hours per workweek and: (i) received Incentive Pay during a corresponding time
19 period; and/or (ii) were subject to Defendants' timekeeping policies and/or
20 practices for non-exempt employees, during the four years immediately preceding
21 the filing of this action through the present.
- 22 c. The Meal Period Class consists of all Defendants' current and former non-exempt
23 employees in California who worked at least one shift in excess of 5.0 hours during
24 the four years immediately preceding the filing of this action through the present.
- 25 d. The Rest Period Class consists of all Defendants' current and former non-exempt
26 employees in California who worked at least one shift in excess of 3.5 hours,
27 during the four years immediately preceding the filing of this action through the
28 present.

1 e. The Reimbursement Class consists of all of Defendants' current and former non-
2 exempt employees in California who were required to use a personal cellular
3 phone, and/or purchased tools for required work activities, and/or a personal
4 vehicle, without reimbursement for work-related purposes during the four years
5 immediately preceding the filing of this action through the present.

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

10 g. The Waiting Time Class consists of (1) all formerly employed members of the
11 Overtime Class, Minimum Wage Class, Meal Period Class, Rest Period Class;
12 and/or (2) any individual who received Incentive Pay during a corresponding time
13 period which sick pay was paid, who separated their employment with Defendants
14 during the three years immediately preceding the filing of this action through the
15 present.

16 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
17 joinder of all members would be unfeasible and not practicable. The membership of the Classes
18 is unknown to Plaintiff at this time; however, it is estimated that the Classes numbers greater than
19 one hundred (100) individuals. The identity of such membership is readily ascertainable via
20 inspection of Defendants' employment records.

21 18. **Common Questions of Law and Fact Predominate/Well Defined Community**
22 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
23 situated employees, which predominate over questions affecting only individual members
24 including, without limitation to:

25 i. Whether Defendants lawfully paid premium wages for all overtime hours worked
26 to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194
27 and 1198;

28 ii. Whether Defendants paid all minimum wages owed for all hours worked to

members of the Minimum Wage Class pursuant to Labor Code §§ 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 §§ 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 §§ 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 § 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 § 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.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies/practices, meal and rest period policies/practices, expense reimbursement policies/practices, and sick pay policies. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff, like the members of the Classes, was employed by Defendants in California during the applicable statute of limitations period and was deprived of all minimum wages owed, overtime wages owed, was not provided all legally required meal and rest periods, was not reimbursed for all necessary business expenses, was not accurately compensated for sick pay at the regular rate

of pay, did not receive accurate, compliant wage statements, and was not paid all final wages owed at the time of separation of employment.

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

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

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

13 25. At all times relevant herein, Defendants were required to properly compensate
14 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
15 hours worked pursuant to Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires
16 an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of
17 pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the
18 workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the
19 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
20 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
21 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
22 Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

23 26. The foregoing policies and practices alleged herein are unlawful and create
24 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
25 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
26 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
27 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

28. Wage Order 16, § 4 and 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.

29. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to compensate Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

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

31. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 16.

32. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and

1 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
2 1194, 1197, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their non-exempt employees in California,
9 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
10 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
11 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
12 of the Meal Period Class at their respective regular rates of pay, in accordance with California
13 Labor Code §§ 204, 210, 226.7, and 512.

14 35. As a result, Defendants are responsible for paying premium compensation for meal
15 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 16,
16 including interest thereon, statutory penalties, civil penalties, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

21 37. Wage Order 16, § 11 and California Labor Code §§ 226.7, 516, 558, and 1198
22 establish the right of employees to be authorized and permitted to take a paid rest period of at
23 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

24 38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
25 of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay
26 rest period premium wages when rest periods were not authorized and permitted.

27 39. The foregoing violations create an entitlement to recovery by Plaintiff and
28 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

42. 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.”

43. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 16 § 8, Plaintiff and members of the Classes were damaged in sums, which will be shown according to proof.

44. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. 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 is entitled to interest, which shall accrue from the date on which Plaintiff incurred the necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

1 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
2 and the Wage Statement Class with wage statements that complied with the requirements of Labor
3 Code § 226(a).

4 47. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage
5 statements resulted in actual injury, as said failures led to, among other things, the non-payment
6 of all overtime and minimum wages owed and all meal and rest period premium wages owed, and
7 deprived Plaintiff of the information necessary to identify the discrepancies in Defendants'
8 reported data.

9 48. Defendants' failures create an entitlement to recovery by Plaintiff and members of
10 the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*,
11 including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
12 according to California Labor Code § 226 *et seq.*

13 **SEVENTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

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

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

23 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 failed to timely pay Plaintiff and members of the Classes all final wages due to them at the time
25 of their separation including, among other things, underpaid overtime and minimum wages owed,
26 meal and rest period premiums, and sick pay wages. Defendants' failure to pay all final wages
27 was willful within the meaning of Labor Code § 203.

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

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

54. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff and the Classes lawful rest periods; failing to reimburse Plaintiff and the Classes for all necessary business expenses; failing to pay sick pay wages at the regular rate of pay; failing to furnish accurate and complete itemized wage statements in violation of § 226 *et seq.*; and failing to pay all final wages at the time of separation from employment.

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

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

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

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

6 **NINTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

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

10 60. Defendants have committed several Labor Code violations against Plaintiff,
11 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
12 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
13 employees, brings this representative action against Defendants to recover the civil penalties due
14 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
15 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
16 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
17 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
18 failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent
19 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
20 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
21 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
22 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
23 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
24 those violations of the Labor Code for which no civil penalty is specifically provided, based on
25 the following Labor Code violations:

- 26 a. Failing to pay Plaintiff and other aggrieved employees all overtime
27 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and
28 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 pay Plaintiff and other aggrieved employees sick time pay at their regular rate of compensation in violation of Labor Code § 246;
- g. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- h. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
- i. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- j. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

61. On March 18, 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 of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former nonexempt employees who worked for Defendants in California at any time between March 18, 2023, and the present.

63. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff 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;

1 9. Upon the Sixth Cause of Action for statutory wage statement penalties pursuant to
2 Labor Code § 226 *et seq.*;

3 10. Upon the Seventh Cause of Action for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203;

5 11. Upon the Eighth Cause of Action for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to be in violation of California Business and Professions Code
8 § 17200 *et seq.*;

9 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
10 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
11 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
12 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
13 pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial
14 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
15 per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee
16 pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
17 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
18 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for which
20 no civil penalty is specifically provided, based on the violations of Labor Code sections cited in
21 Paragraph 60 (a)-(j) above;

22 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
23 § 218.6, and Civil Code §§ 3287 and 3289;

24 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
25 §§ 218.5, 226, 1194 *et seq.*, 2802(c), 26985 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: May 23, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:

Fletcher W. Schmidt
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: May 23, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:

Fletcher W. Schmidt
Attorney for Plaintiff