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FILED

Superior Court of California
 County of Los Angeles

07/05/2024

David W. Slayton, Executive Officer / Clerk of Court

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 SERGIO ORTIZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**

SERGIO ORTIZ, an individual, on behalf of
 himself and all others similarly situated,

Plaintiff,

vs.

PACIFIC AIR INDUSTRIES, LLC, a California
 limited liability company; AIR-CERT, LLC, a
 California limited liability company; and DOES
 1 through 100,

Defendants.

CASE NO. 24STCV00363

[Assigned for All Purposes to the Hon.
 Judge William F. Highberger – Dept. 11]

**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 §§ 510 1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7 AND 512);**
- (4) REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
 NECESSARY BUSINESS
 EXPENSES (LABOR CODE §§
 2802, 2804);**
- (6) WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203)**
- (7) UNFAIR COMPETITION (BUS &
 PROF CODE § 17200 et seq.)**
- (8) CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS
 GENERAL ACT**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Sergio Ortiz (hereinafter “Plaintiff”) on behalf of himself and all others similarly
2 situated, hereby bring this Class and Representative Action Complaint against Defendants Pacific
3 Air Industries, LLC, a California limited liability company, Air-Cert, LLC, a California limited
4 liability company, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information
5 and belief allege as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 class action for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200, *et. seq.*, Labor Code §§ 201-203, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
10 1197, 1198, 2802, 2804, 2698 *et seq.*, and Industrial Welfare Commission Wage Order No. 7
11 (“Wage Order 7”), in addition to seeking declaratory relief and restitution. This class action is
12 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court’s jurisdictional minimum.

15 **VENUE**

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

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt Sales
27 employee. Plaintiff was , and is, a victim of Defendants’ policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by California

1 Labor Code §§ 201-203, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
2 2804, 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (Unfair
3 Competition), and Wage Order 7, which sets employment standards for occupations in the
4 mercantile industries.

5 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
6 years preceding the filing of the Complaint and continuing to the present, Defendants Pacific Air
7 Industries, LLC and Air-Cert, LLC did (and do) business by selling and repairing airplane parts
8 and components, and employed Plaintiff and other, similarly-situated non-exempt employees
9 within Los Angeles County and the State of California and, therefore, were (and are) doing
10 business in Los Angeles County and the State of California.

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

19 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes (as
21 defined in Paragraph 23).

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

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
5 Members, (as defined in Paragraph 23).

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff is informed and believes, and based thereon alleges that Defendant Pacific
8 Air Industries, LLC is in the business of selling airplane parts and components in the commercial
9 airline industry. Plaintiff is informed and believes, and based thereon alleges that Defendant Air-
10 Cert, LLC is in the business of repairing airplane parts and components in the commercial airline
11 industry.

12 10. Plaintiff Sergio Ortiz was employed by Defendants as a non-exempt Sales
13 employee based out of Defendants' location Chatsworth, California from four years prior to filing
14 of this Complaint through September 2022. Throughout his employment with Defendants,
15 Plaintiff was responsible for performing sales, brokering parts, repairs, following up on repairs,
16 and general customer service.

17 11. At all times relevant herein, Plaintiff generally worked Monday through Friday
18 from at least 7:00 a.m. until approximately 4:00 p.m. to 5:00 p.m. (the "Scheduled Shifts")

19 12. During the relevant time period, Defendants utilized a timekeeping policy/practice
20 of requiring Plaintiff and, on information and belief, other non-exempt employees to punch-in
21 and punch-out of Defendants' timekeeping system upon the start of the Scheduled Shifts, upon
22 the start and end of their meal period, and upon the end of their Scheduled Shifts, using an
23 electronic timekeeping application on employees' personal cell phones, and the timestamp from
24 each time-punch would be treated as the employee's clock-in/out time.

25 13. In addition, at all times relevant herein, Defendants required Plaintiff and, on
26 information and belief, other non-exempt employees to work continuously for 24-hours a day for
27 48 consecutive hours, and later to work continuously 24-hours a day for seven consecutive days
28 (the "Non-Stop Shifts") to provide Defendants' Aircraft On Ground Service ("AOG Service") to

1 clients. Defendants assigned a different non-exempt employee to provide the AOG Service
2 during the Non-Stop Shifts on weekend assignments, and later on weekly assignments. Plaintiff
3 is informed and believes, and based thereon alleges, that Defendants' AOG Service is a 24-hour
4 immediate-response service that Defendants have provided and continue to provide to their
5 customers.

6 14. At all times relevant herein, Defendants subjected Plaintiff and, on information and
7 belief, other non-exempt employees to control at all times during the Non-Stop Shifts, including
8 because (1) Defendants required Plaintiff to remain with his cell phone and within proximate
9 geography of Defendants' facility and/or Plaintiff's computer to receive service calls/emails during
10 these shifts; (2) Defendants required Plaintiff to immediately respond and resolve incoming calls
11 and/or emails during these shifts, which included requiring Plaintiff to complete sales transactions,
12 and to go to Defendants' warehouse, identify the needed part(s), and prepare them for immediate
13 pickup and/or requiring Plaintiff to communicate with Defendants' warehouse employees and
14 direct them to do the same; (3) Plaintiff was unable to engage in personal activities during the Non-
15 Stop Shifts; and (4) Plaintiff was not allowed to "trade" his Non-Stop Shifts' duties with other
16 employees. When Plaintiff received an AOG Service inquiry during the Non-Stop Shifts, he was
17 required to immediately respond to the service call regardless of the time of day or night, and each
18 response transaction/order generally took approximately one to five hours of work.

19 15. At all times relevant herein, Defendants did not provide Plaintiff and, on
20 information and belief, other non-exempt employees a mechanism through which to record their
21 hours worked during the Non-Stop Shifts. Instead, Defendants required Plaintiff to remain on duty
22 throughout the Non-Stop Shifts and to record the number/price of parts sold during these shifts.

23 16. At all times relevant herein, Defendants did not pay Plaintiff and, on information
24 and belief, other non-exempt employees an hourly wage for work performed during the Non-Stop
25 Shifts. Instead, Defendants paid to Plaintiff and, on information and belief, other non-exempt
26 employees a fixed percentage of the sale amounts that Plaintiff and, on information and belief,
27 other non-exempt employees completed during the Non-Stop Shifts (the "Piece Rate System").
28

1 17. At all times relevant herein, Defendants, as a matter of policy and/or practice, did
2 not pay Plaintiff and, on information and belief, other non-exempt employees (1) at least the
3 California minimum wage, (2) overtime wages, and (3) double-time wages for all hours they were
4 under Defendants’ control, including because Defendants’ Piece Rate System did not separately
5 compensate them for (1) all hours they were subject to Defendants’ control and/or suffered or
6 permitted to work for Defendants during the Non-Stop Shifts, and (2) for rest periods. See
7 California Labor Code § 226.2; *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98 (2017);
8 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013) (holding that mechanics were
9 owed unpaid wages because employer did not pay them a separate hourly minimum wage for time
10 spent during their work shifts performing non-repair tasks); *Bluford v. Safeway Stores, Inc.*, 216
11 Cal. App. 4th 864, 872 (2013) (“a piece-rate compensation formula that does not compensate
12 separately for rest periods does not comply with California minimum wage law.”)

13 18. In addition, at all times relevant herein, Defendants, as a matter of policy and/or
14 practice, did not pay Plaintiff and, on information and belief, other non-exempt employees all
15 overtime wages owed for overtime hours that they worked work over eight hours in a workday or
16 over 40 hours per workweek. Plaintiff and, on information and belief, other non-exempt
17 employees received various forms of non-discretionary pay, such as “commission” pay, and/or
18 other forms of pay that are not excludable under California law when calculating an employee’s
19 regular rate (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive
20 Pay”). Despite Defendants’ payment of Incentive Pay to Plaintiff and, on information and belief,
21 other non-exempt employees, Defendants’ payroll policy/practice failed to include all forms of
22 Incentive Pay when calculating their regular rate of pay, thereby causing the employees to be
23 underpaid all their required overtime wages. Rather, Defendants’ payroll policy/practice paid
24 Plaintiff and, on information and belief, other non-exempt employees only one and a half times
25 their base rate, which was not equal to the regular rate, as Defendants’ payroll policy/practice
26 failed to include the various forms of Incentive Pay earned during corresponding pay periods that
27 were required to be included in the regular rate but were not.

28 19. At all times relevant herein, Defendants also maintained a policy/practice that

1 failed to provide Plaintiff and, on information and belief, other non-exempt employees an
2 uninterrupted thirty-minute meal period before the end of their fifth hour of work, and/or a second
3 uninterrupted thirty-minute meal period before the end of their tenth hour of work, including by
4 requiring Plaintiff and, on information and belief, other non-exempt employees to perform such
5 a large volume of assigned work within their Scheduled Shifts that prevented Plaintiff and other
6 non-exempt employees from being able to take legally compliant meal periods. Nonetheless, in
7 the event that a required meal period was not timely provided, Defendants generally did not pay
8 Plaintiff, and on information and belief, other non-exempt employees the meal period premiums
9 required by Labor Code § 226.7.

10 20. During the relevant time period, Defendants also maintained policies and/or
11 practices that failed to authorize and permit Plaintiff and, on information and belief, other non-
12 exempt employees to take full, uninterrupted, off-duty rest periods for every shift lasting three
13 and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every
14 shift lasting six (6) to ten (10) hours and/or three full, uninterrupted, off-duty rest periods for
15 every shift lasting more than ten (10) hours, and failed to make a good faith effort to authorize
16 and permit such rest periods in the middle of each work period. Specifically, Defendants policy
17 and/or practice discouraged Plaintiff and, on information and belief, other non-exempt employees
18 from taking legally compliant rest periods and pressured them to work through their rest periods,
19 including by requiring Plaintiff and, on information and belief, other non-exempt employees to
20 perform such a large volume of work within their Scheduled Shifts that prevented Plaintiff and
21 other non-exempt employees from being able to take legally compliant first and/or second and/or
22 third rest periods. Despite Defendants' failure to authorize and permit all required rest periods
23 due to their uniform and unlawful practices, Defendants never provided Plaintiff and, on
24 information and belief, other non-exempt employees with an hour of pay at their regular rate for
25 each rest period violation as required by Labor Code § 226.7.

26 21. During the relevant time period, Defendants maintained a policy and/or practice
27 of failing to reimburse Plaintiff and, on information and belief, other non-exempt employees for
28 all necessary business expenses. Defendants required Plaintiff and, on information and belief,

1 other non-exempt employees to (1) use their personal cell phones to punch-in/out of Defendants'
2 electronic timekeeping system, to communicate via phone calls and emails with Defendants'
3 clients, and to connect to Defendants' electronic system, and (2) to have home internet service to
4 perform work from home, including to connect to Defendants' electronic system. Despite being
5 required to use their personal cell phones and to incur the costs of home internet service to perform
6 their job duties, Plaintiff and, on information and belief, other non-exempt employees were never
7 reimbursed by Defendants for such necessary expenses, as mandated by Labor Code § 2802

8 22. As a result of Defendants' failure to pay all minimum wages, overtime wages,
9 meal premium wages, and rest premium wages, Defendants also failed to pay Plaintiff and, on
10 information and belief, other non-exempt employees all wages owed upon termination of
11 employment, in violation of Labor Code sections 201-202.

12 **CLASS ACTION ALLEGATIONS**

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

- 15 a. Minimum Wage Class: consists of all of Defendants' current and former non-
16 exempt employees in California who were subject to Defendants' Piece Rate
17 System, during the four years immediately preceding the filing of this
18 Complaint through the present;
- 19 b. Overtime Wage Class: consists of all of Defendants' current and former non-
20 exempt employees (1) who worked at least one shift in excess of eight hours or
21 at least one workweek in excess of 40 hours and were subject to Defendants'
22 Piece Rate System, during the four years immediately preceding the filing of
23 this Complaint through the present, and/or (2) who worked at least one shift in
24 excess of eight hours or at least one workweek in excess of 40 hours and who
25 received Incentive Pay and overtime compensation during a corresponding time
26 period, during the four years immediately preceding the filing of this Complaint
27 through the present;
28

1 c. Meal Period Class: consists of all of Defendants' current and former non-
2 exempt employees who (1) worked at least one shift in excess of 5.0 hours and
3 who did not receive an uninterrupted meal period of at least thirty minutes
4 before the start of the employee's sixth hour of work as reflected in the
5 employee's timekeeping records; and/or (2) worked at least one shift in excess
6 of 10.0 hours and who did not receive a second uninterrupted meal period of at
7 least thirty minutes before the start of the employee's eleventh hour of work as
8 reflected in the employee's timekeeping records, during the four years
9 immediately preceding the filing of this Complaint through the present.

10 d. Rest Period Class: consists of all of Defendants' current and former non-exempt
11 employees in California who (1) were subject to Defendants' Piece Rate
12 System, during the four years immediately preceding the filing of this
13 Complaint through the present, and/or (2) worked at least one shift in excess of
14 3.5 hours and who were not authorized and permitted to take a first rest period
15 of at least ten minutes, during the four years immediately preceding the filing
16 of this Complaint through the present, and/or (3) worked at least one shift in
17 excess of 6.0 hours and who were not authorized and permitted to take a second
18 rest period of at least ten minutes, during the four years immediately preceding
19 the filing of this Complaint through the present, and/or (4) worked at least one
20 shift in excess of 10.0 hours and who were not authorized and permitted to take
21 a third rest period of at least ten minutes, during the four years immediately
22 preceding the filing of this Complaint through the present,.

23 e. Reimbursement Class: consists of all of Defendants' current and former
24 employees who were required to use their personal cell phones and/or to
25 purchase home internet service to perform their work duties, without
26 reimbursement during the four years immediately preceding the filing of this
27 Complaint through the present date;
28

1 f. Waiting Time Penalty Class: consists of all formerly employed members of the
2 Minimum Wage Class, Overtime Wage Class, Meal Period Class, and Rest
3 Period Class, who separated their employment from Defendants during the
4 three years immediately preceding the filing of this lawsuit through the present
5 date.

6 24. **Numerosity/Ascertainability**: The members of the Classes are so numerous that
7 joinder of all members would be unfeasible and not practicable. The membership of the classes
8 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes
9 number greater than forty (40) individuals as to each Class. The identity of such membership is
10 readily ascertainable via inspection of Defendants' employment records.

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

- 15 a. Whether Defendants' policies and/or practices resulted in the failure to
16 properly compensate members of the Minimum Wage and Overtime Wage
17 Classes for all hours actually worked;
- 18 b. Whether Defendants' policies and/or practices resulted in the failure to
19 properly compensate members of the Overtime Wage Class at the correct
20 overtime rate for all overtime hours worked;
- 21 c. Whether Defendants' policies and/or practices provided legally compliant first
22 and/or second meal periods to members of the Meal Period Class;
- 23 d. Whether Defendants' policies and/or practices authorized and permitted
24 legally compliant first and/or second and/or third rest breaks to members of
25 the Rest Period Class;
- 26 e. Whether Defendants policies and/or practices reimbursed members of the
27 Reimbursement Class for all necessary business expenses incurred by those
28 employees;

f. Whether Defendants policies and/or practices timely paid all wages, including minimum wages, overtime wages, meal period premium wages, rest period premium wages, to members of the Waiting Time Penalty Class upon termination of their employments pursuant to Labor Code sections 201-202.

26. **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' failure to compensate minimum wages for all hours worked, failure to compensate overtime wages, including at the correct overtime rate, for all overtime hours worked over eight-hours in a workday or over forty-hours in a workweek, failure to authorize and permit legally compliant rest periods or pay premium pay in lieu thereof, failure to provide legally compliant meal periods or pay premium pay in lieu thereof, failure to reimburse necessary business expenses, and failure to timely pay all final wages upon termination of employment. Thus, 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.

27. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as non-exempt employees in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum and overtime wages, were deprived of legally compliant rest periods and meal periods, were deprived of reimbursement for necessary business expenses, and was deprived of payment of all final wages upon the termination of his employment with Defendants.

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

1 prosecuting this action on behalf of the members of the classes.

2 29. **Superiority:** The California Labor Code is broadly remedial in nature and serves
3 an important public interest in establishing minimum working conditions and standards in
4 California. These laws and labor standards protect the average working employee from
5 exploitation by employers who have the responsibility to follow the laws and who may seek to
6 take advantage of superior economic and bargaining power in setting onerous terms and
7 conditions of employment. The nature of this action and the format of laws available to Plaintiff
8 and members of the Classes make the class action format a particularly efficient and appropriate
9 procedure to redress the violations alleged herein. If each employee were required to file an
10 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
11 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
12 their vastly superior financial and legal resources. Moreover, requiring each member of the
13 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
14 employees who would be disinclined to file an action against their former and/or current employer
15 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
16 employment. Further, the prosecution of separate actions by the individual class members, even
17 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
18 with respect to the individual class members against Defendants herein; and which would
19 establish potentially incompatible standards of conduct for Defendants; and/or legal
20 determinations with respect to individual class members which would, as a practical matter, be
21 dispositive of the interest of the other class members not parties to adjudications or which would
22 substantially impair or impede the ability of the class members to protect their interests. Further,
23 the claims of the individual members of the class are not sufficiently large to warrant vigorous
24 individual prosecution considering all of the concomitant costs and expenses attending thereto.
25 As such, the Classes identified in Paragraph 23 are maintainable as a Class under § 382 of the
26 Code of Civil Procedure.

27 **FIRST CAUSE OF ACTION**

28 **MINIMUM WAGE VIOLATIONS**

1 (AGAINST ALL DEFENDANTS)

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

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

9 32. As discussed in the factual allegations contained herein, Defendants failed to
10 conform their timekeeping practices to the requirements of the law. Accordingly, Plaintiff and
11 members of the Minimum Wage Class were not compensated for all hours worked including, but
12 not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted
13 to work under the California Labor Code and Wage Order 7.

14 33. Defendants' policy and practice of not paying all minimum wages violates
15 California Labor Code §§ 204, 210, 216, 558, 1182.12, 1197.1, 1198, and Wage Order 7.

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

22 **SECOND CAUSE OF ACTION**

23 **OVERTIME WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 36. Wage Order 7 and California Labor Code §§ 510, 1194, and 1198 establish the right
27 of employees to be paid one and one-half times the employee's regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including 12 hours in any workday or more than 40

1 hours in any workweek, and for the first eight (8) hours worked on the seventh (7th) consecutive
2 day of work in a workweek, in amounts set by state law. Labor Code §§ 1194(a) and provides that
3 an employee who has not been paid overtime wages as required by Labor Code § 510 may recover
4 the unpaid balance together with interest accrued thereon, attorneys' fees, and costs of suit.

5 37. At all relevant times herein, Defendants failed to conform their pay practices to the
6 requirements of the law by causing Plaintiff and members of the Overtime Wage Class to work in
7 excess of 8 hours per workday, and/or 40 hours per workweek, but failing to compensate Plaintiff
8 or members of the Overtime Wage Class at one and one-half times their regular rate of pay for all
9 overtime hours worked.

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

15 39. Defendants' practice and uniform administration of corporate policy regarding
16 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
17 members of the Overtime Wage Class in a civil action for the unpaid amount of overtime wages,
18 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to
19 California Labor Code §§ 204, 558, 510, 1194, 1198, and Code of Civil Procedure § 1021.5.

20 **THIRD CAUSE OF ACTION**

21 **MEAL PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

24 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
25 in their affirmative obligation to provide all of their hourly non-exempt employees, including
26 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
27 the mandates of the California Labor Code and Wage Order 7, for the reasons set forth in the
28 factual allegations and class definitions sections of this Complaint. Despite Defendants'

violations, Defendants did not pay an additional hour of pay to Plaintiff and, on information and belief, members of the Meal Period Class at their respective regular rates of pay for each meal period violation, as required by Labor Code § 226.7.

42. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 7, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to authorize and permit all of their hourly non-exempt employees, including Plaintiff and members of the Rest Period Class, to take all rest periods to which they were legally entitled in accordance with the mandates of the California Labor Code and Wage Order 7, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1032 (2012) (“In the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break.”)

45. Despite Defendants’ violations, Defendants have not paid an additional hour of pay to Plaintiff and, on information and belief, members of the Rest Period Class at their respective regular rates of pay for each rest period violation, in accordance with California Labor Code § 226.7.

46. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 7, California Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

48. It was necessary for Plaintiff and, on information and belief, members of the Reimbursement Class to use their personal cell phones and to incur the costs of home internet service to perform their job duties. Although Plaintiff and, on information and belief, members of the Reimbursement Class incurred these expenses at the direction of Defendants and/or in the direct discharge of their job duties, Defendants did not reimburse these employees for such necessary work expenditures during the four years preceding the filing of the Complaint.

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

50. 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.

51. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and, on information and belief, members of the Reimbursement Class were damaged in sums, which will be shown according to proof.

52. Plaintiff and members of the Reimbursement Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

53. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

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1 Classes all minimum wages and overtime wages; failing to provide all legally required meal
2 periods and rest periods or pay legally compliant premium payments in lieu thereof; failing to
3 reimburse necessary business expenses; and wilfully failing to pay all final wages upon termination
4 of employment.

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

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

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

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

21 **EIGHTH CAUSE OF ACTION**
22 **PRIVATE ATTORNEYS GENERAL ACT**
23 **(AGAINST ALL DEFENDANTS)**

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

25 65. Defendants have committed several Labor Code violations against Plaintiff,
26 members of the Classes, and other similarly aggrieved employees. Plaintiff, an "aggrieved
27 employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other
28 similarly aggrieved employees, brings this representative action against Defendants to recover the

civil penalties due to Plaintiff, the members of the Classes, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the following Labor Code violations:

- a. Failing to compensate at least the California minimum wage for all hours worked to Plaintiff, the Minimum Wage Class, and other similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197
- b. Failing to compensate overtime wages for all hours worked over eight-hours in a workday or over forty-hours in a workweek to Plaintiff, the Overtime Wage Class, and other similarly aggrieved employees in violation of Labor Code §§ 510, 1194, 1198;
- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512;
- d. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 516;
- e. Failing to reimburse Plaintiff, the Reimbursement Class, and other similarly aggrieved employees in violation of Labor Code § 2802;
- f. Failing to furnish Plaintiff, the Waiting Time Penalty Class, and other similarly aggrieved employees all earned wages due at the end of their employments in violation of Labor Code §§ 201-202.

66. On or about April 30, 2024, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code section 2698 *et seq.* Plaintiff also submitted filing fees of seventy-five (\$75.00) to the LWDA in

1 accordance with Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date
2 of Plaintiff's notice to the LWDA, and thus Plaintiff has exhausted his administrative remedies,
3 thereby allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code
4 section 2699.

5 67. Plaintiff was compelled to retain the services of counsel to file this court action to
6 protect their interests and the interests of other similarly aggrieved employees, and to assess and
7 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
8 costs, which they are entitled to receive under California Labor Code § 2699.

9 **PRAYER**

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

- 12 1. For an order certifying the proposed Classes;
- 13 2. For an order appointing Plaintiff as representative of the Classes;
- 14 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 15 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
16 damages, and penalties according to proof pursuant to Labor Code § 558, 1194, 1194.2 and 1199;
- 17 5. Upon the Second Cause of Action, for payment of unpaid overtime wages, and
18 penalties according to proof pursuant to Labor Code §§ 510, 1194, and 1198;
- 19 6. Upon the Third Cause of Action, compensatory, consequential, general and special
20 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 21 7. Upon the Fourth Cause of Action, compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 23 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 25 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§
26 201-203;
- 27 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
28 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or

practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other similarly 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) \$50.00 for each initial violation and \$100 for each subsequent violation of Labor Code § 558 per employee per pay period plus an amount sufficient to recover the unpaid wages and; (2) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5;

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

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Respectfully submitted,

Dated: July 5, 2024

SANI LAW, APC

By:



Sam Sani
Attorney for Plaintiff
SERGIO ORTIZ

DEMAND FOR JURY TRIAL

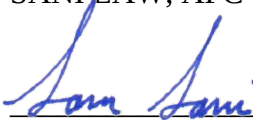
Plaintiff Sergio Ortiz hereby demands a jury trial with respect to all issues triable by jury.

Respectfully submitted,

Dated: July 5, 2024

SANI LAW, APC

By:



Sam Sani

Attorney for Plaintiff

SERGIO ORTIZ