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Clerk of the Superior Court
By A. Villasenor, Deputy Clerk

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Aden M. Khachadorian (SBN 346908)
akhachadorian@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

SERGIO RODRIGUEZ NAVA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

LDI MECHANICAL, INC., a Delaware
Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2024-00026988-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) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*); and**
- (7) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Sergio Rodriguez Nava ("Plaintiff"), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint ("Complaint") against Defendant LDI Mechanical, Inc., a Delaware corporation; 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, penalties, and unreimbursed expenses under California Labor Code §§ 204, 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.* ("Unfair Competition Law"), and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"), in addition to seeking declaratory relief, injunctive relief, and restitution. This class 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 jurisdictional district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of San Diego. Defendants own, maintain offices, transact business, have an agent or agents within San Diego County, and/or otherwise are found within San Diego County, and Defendants are within the jurisdiction of this Court for purpose 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. During the four years immediately preceding the filing of this lawsuit and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as an hourly non-exempt employee.

1 Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost
2 money and/or property, and has been deprived of the rights guaranteed to his by California Labor
3 Code §§ 204, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and
4 2698 *et seq.*, California Business and Professions Code § 17200, and Wage Order 4, which sets
5 employment standards for professional, technical, clerical, mechanical, and similar occupations.

6 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of this Complaint and continuing to the present, Defendants did (and
8 do) business by operating a full-service heating, ventilation, and air conditioning company,
9 specializing in HVAC design, fabrication, and installation services primarily for multi-family and
10 commercial projects, and employed Plaintiff and other, similarly situated non-exempt employees
11 within San Diego County and the state of California, and, therefore, were (and are) doing business
12 in San Diego County and the State of California.

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

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

26 7. Plaintiff is further informed and believes, and thereon alleges, that each of the
27 Defendants herein, whether designated by real or fictitious name, are, and at all times relevant
28 hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as

well as the agents of all Defendants, and in doing things and acts herein alleged and complained of or in failing to do that which they should have done, were acting within the scope of employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions alleged herein.

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

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a full-service heating, ventilation, and air conditioning company, specializing in HVAC design, fabrication, and installation services primarily for multi-family and commercial projects. Plaintiff has been employed by Defendants as a “Lead Man” (or similarly titled position) since approximately 2001. Plaintiff’s job duties include installation of air conditioning and HVAC units and ducts for residential and commercial projects. Plaintiff commenced a medical leave of absence on approximately January 24, 2023. Unless otherwise specified, all allegations herein occurred during Plaintiff’s employment with Defendants.

10. Throughout Plaintiff’s employment with Defendants, Defendants’ timekeeping policies and/or practices resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked, including all hours subject to the control of Defendants and/or suffered or permitted to work, whether by rounding, time-shaving, or otherwise. Specifically, Defendants require Plaintiff and other non-exempt employees to travel to their assigned jobsites, which can vary in location each day, before being permitted to clock in for their work shift, and therefore Defendants failed to pay Plaintiff and other non-exempt employees for all time spent traveling to their initial jobsite each work day. Upon information and belief, Defendants’ supervisors recorded the hours worked for Plaintiff and other non-exempt employees, but did not accurately record the total hours worked or actual start and end times for Plaintiff and other non-exempt employees, instead only recording the employees’ start time after

1 they arrived at the jobsite, resulting in Defendant's failure to compensate for all hours actually
2 worked. Additionally, upon information and belief, Defendants rounded and/or time-shaved
3 Plaintiff's and other non-exempt employees' hours in quarter increments, which resulted in
4 Plaintiff and other non-exempt employees not being compensated for all hours actually worked.
5 *See Camp v. Home Depot U.S.A., Inc.*, (2022) 84 Cal.App.5th 638, 654 ("[I]f an employer, as in
6 this case, can capture and has captured the exact amount of time an employee has worked during
7 a shift, the employer must pay the employee for "all the time" worked."). As a result, Plaintiff
8 and other non-exempt employees were not compensated for all earned minimum and overtime
9 wages.

10 11. Throughout Plaintiff's employment, Defendants have maintained unlawful meal
11 period policies/practices that fail to provide Plaintiff and other non-exempt employees with all
12 timely, duty-free 30-minute meal periods commencing before the end of the fifth hour of work.
13 Specifically, Defendants frequently failed to provide Plaintiff and other non-exempt employees
14 with timely meal periods commencing prior to the completion of five hours of work. Additionally,
15 Defendants have also failed to provide Plaintiff and other non-exempt employees with any second
16 meal periods, even though Plaintiff and other non-exempt employees frequently worked shifts in
17 excess of 10.0 hours. On occasions when Plaintiff and other non-exempt employees are not
18 provided with all lawful meal periods to which they were entitled, Defendants fail to pay Plaintiff
19 and other non-exempt employees an additional hour of premium pay at their respective regular
20 rates of pay for each workday in which a meal period violation occurred, as required by Labor
21 Code § 226.7.

22 12. Defendants also maintain an unlawful rest period policy/practice that fails to
23 authorize and permit Plaintiff and other non-exempt employees to take all lawful, duty-free 10-
24 minute rest periods for every four hours worked, or major fraction thereof. Specifically,
25 Defendants maintain a policy and/or practice of unlawfully combining rest breaks into the
26 employees' meal periods, resulting in Plaintiff and other non-exempt employees only being
27 authorized and permitted to take a single, hour-long break during their work shift in violation of
28 California law. *See Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027 (holding that in the

context of an 8-hour shift with a single meal period, the preferred schedule requires the provision of a rest period in the middle of each “work period” before and after the meal break, and that “a departure from the preferred schedule is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would be imposed on the employer by implementing the preferred schedule.”). Despite Defendants’ failure to authorize and permit Plaintiff and other non-exempt employees to take all legally compliant rest periods to which they were entitled, Defendants have failed to compensate Plaintiff and other non-exempt employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

13. Defendants also require Plaintiff and other non-exempt employees to use their personal cellular phones, vehicles, and tools for necessary work purposes. Specifically, Plaintiff and other non-exempt employees are required to use their personal cellular phones for necessary work purposes, including to communicate daily with supervisors. Further, Plaintiff and other non-exempt employees are required to drive their own personal vehicles to and from their respective job sites, however, Defendants have failed to compensate Plaintiff and other non-exempt employees for all expenses, including mileage, relating to their use of personal vehicles. Additionally, Plaintiff and other non-exempt employees are required to buy tools, such as impact drills, drills, levels, metal scissors, and electric saws, needed to complete their assigned work duties. However, Defendants fail to reimburse Plaintiff and other non-exempt employees for a reasonable portion of their cellular phone expenses, use of their personal vehicles, or for the cost of necessary work tools, as mandated by Labor Code § 2802. *See also Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 (holding that an employer must reimburse a reasonable portion of an employee’s cell phone bill when its use is necessary for the job).

14. On approximately April 25, 2024, Plaintiff submitted a written personnel and payroll records request to Defendants. Defendants failed to respond to Plaintiff’s records request within 21 calendar days from the date of the request, in violation of Labor Code § 226(c).

1 **CLASS ACTION ALLEGATIONS**

2 15. Class Definitions: Plaintiff brings this action on behalf of himself and the
3 following Classes pursuant to § 382 of the California Code of Civil Procedure:

4 a. The Overtime Class consists of all of Defendants' current and former non-exempt
5 employees in California who worked more than eight (8) hours per day and/or
6 forty (40) hours per week and were subject to Defendants' timekeeping
7 policies/practices, during the four years immediately preceding the filing of the
8 lawsuit through the present.

9 b. The Minimum Wage Class consists of all of Defendants' current and former non-
10 exempt employees in California who were subject to Defendants' timekeeping
11 policies and/or practices, during the four years preceding the filing of the lawsuit
12 through the present.

13 c. The Meal Period Class consists of all of Defendants' current and former non-
14 exempt employees in California who: (i) worked at least one shift in excess of 5.0
15 hours without being provided a meal period of at least 30-minutes commencing
16 before the end of the fifth hour of work, and/or (ii) worked at least one shift in
17 excess of 10.0 hours without being provided a second meal period of at least 30-
18 minutes commencing before the end of the tenth hour of work, during the four
19 years immediately preceding the filing of the lawsuit through the present.

20 d. The Rest Period Class consists of all of Defendants' current and former non-
21 exempt employees in California who worked at least one shift in excess of 3.5
22 hours, during the four years immediately preceding the filing of the lawsuit
23 through the present.

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

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1 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes
3 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes
4 number greater than fifty (50) individuals as to each Class. The identity of such membership is
5 readily ascertainable via inspection of Defendants' employment records.

6 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
8 situated employees, which predominate over questions affecting only individual employees
9 including, without limitation:

- 10 i. Whether Defendants' timekeeping policies and/or practices resulted in the failure
11 to properly compensate members of the Overtime and Minimum Wage Classes;
12 ii. Whether Defendants provided all legally compliant meal periods to members of
13 the Meal Period Class;
14 iii. Whether Defendants authorized and permitted all legally compliant rest periods to
15 members of the Rest Period Class;
16 iv. Whether Defendants provided meal and/or rest period premium payments for non-
17 complaint meal and/or rest periods; and
18 v. Whether Defendants failed to properly reimbursed the members of the
19 Reimbursement Class for all necessary business expenses incurred.

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

27 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
28 Defendants employed Plaintiff as a non-exempt employee in California during the statute of

1 limitations periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like
2 the members of the Classes was deprived of all overtime and minimum wages, was not provided
3 all legally required meal periods, was not authorized and permitted to take all lawful rest periods,
4 and was not reimbursed for necessary business expenditures.

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

11 21. **Superiority:** The California Labor Code is broadly remedial in nature and serves
12 an important public interest in establishing minimum working conditions and standards in
13 California. These laws and labor standards protect the average working employee from
14 exploitation by employers who have the responsibility to follow the laws, and who may seek to
15 take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment. The nature of this action and the format of laws available to Plaintiff
17 and members of the Classes make the class action format a particularly efficient and appropriate
18 procedure to redress the violations alleged herein. If each employee was required to file an
19 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
20 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
21 their vastly superior financial and legal resources. Moreover, requiring each member of the
22 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
23 employees who would be disinclined to file an action against their former and/or current employer
24 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
25 employment. Further, the prosecution of separate actions by the individual class members, even
26 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
27 with respect to the individual class members against Defendants herein; and which would
28 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 (as defined herein) are maintainable under § 382 of the Code of Civil Procedure. As such, each of the Classes (as defined herein) are maintainable under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

23. 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.

24. 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 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

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

FAILURE TO PAY ALL MINIMUM WAGES OWED
(AGAINST ALL DEFENDANTS)

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

29. 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. 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

civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 1194, 1197, and 1198, Wage Order 4, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

34. As a result, Defendants are responsible for paying premium compensation to Plaintiff and members of the Meal Period Class for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 4, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Wage Order 4, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

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

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1 38. The foregoing violations create an entitlement to recovery by Plaintiff and
2 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
3 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
4 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289 and Wage
5 Order 4.

6 **FIFTH CAUSE OF ACTION**

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

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

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

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

19 42. As a proximate result of Defendants’ policies and/or practices in violation of Labor
20 Code §§ 2802 and 2804, and Wage Order 4 § 9, Plaintiff and members of the Reimbursement
21 Class were damaged in sums, which will be shown according to proof.

22 43. Plaintiff and members of the Reimbursement Class are entitled to attorney’s fees
23 and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor
24 Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries
25 interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to interest, which
26 shall accrue from the date on which Plaintiff incurred the necessary expenditure.

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1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 45. 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 failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing
8 to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff
9 and the Classes lawful rest periods; and failing to reimburse Plaintiff and the Classes for all
10 necessary business expenses.

11 46. 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 47. 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 all monies withheld, acquired and/or
19 converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

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

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

51. 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 for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee 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 necessary expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish other aggrieved employees with all accurate and compliant itemized wage statements in violation of Labor Code § 226 *et seq.*;
- g. Failing to timely pay all final wages due to aggrieved employees upon their respective separations from employment in violation of Labor Code §§ 201, 202 and 203;
- h. Failing to maintain accurate records on behalf of Plaintiff and other 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.

52. On June 7, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 51 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 51 (a)-(i);

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

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

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

Dated: August 13, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: August 13, 2024

HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff