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ELECTRONICALLY

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SAN LUIS OBISPO SUPERIOR COURT
BY 
Julie Vierra, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO**

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

Plaintiff,

vs.

CALIFORNIA CUSTOM POWER SPORTS,
INC., a California corporation; and DOES 1
through 100,

Defendants.

Case No. 24CVP-0190

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

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, and 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, and 558);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, and 558);**
- (4) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (5) **FAILURE TO INDEMNIFY FOR
ALL NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802 and 2804);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **FAILURE TO PAY SICK PAY
WAGES (LABOR CODE § 246);**
- (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**

1 Plaintiff Jose Gonzalez (“Plaintiff”), as an individual and on behalf of all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants California Custom Power Sports, Inc., a California
4 Corporation, and DOES 1 through 100, inclusive (collectively, “Defendants”), and on information
5 and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under Labor Code §§ 201-204, 226 *et seq.*,
9 226.7, 245.5, 246, 510, 512, 516, 558, 1194, 1198, 2698 *et seq.*, 2802, 2804, California Business
10 & Professions Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order No. 7
11 (“Wage Order 7”), in addition to seeking declaratory relief and restitution. This Complaint 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 San Luis Obispo County. Defendants own, maintain offices, transact business, have
19 an agent or agents within San Luis Obispo County, and/or otherwise are found within San Luis
20 Obispo County, and Defendants are within the jurisdiction of this Court for purposes of service
21 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 living within San Obispo County. Within the
25 statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
26 employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’
27 policies and/or practices complained of herein, lost money and/or property, and has been deprived
28 of the rights guaranteed to him by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 245.5, 246, 510,

1 512, 516, 558, 1194, 1198, 2698 *et seq.*, 2802, 2804, Business and Professions Code Section §
2 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 7, which sets employment standards
3 for the mercantile industry.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of this action and continuing to the present, Defendants did (and
6 continue to do) business within San Luis Obispo County and the State of California by operating
7 a company specializing in the sale and service of trailers, power sports vehicles, and marine
8 products, and therefore, were (and are) doing business in San Luis Obispo County and the State
9 of California.

10 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 mentioned herein, Defendants were licensed to do business in California and were the employers
12 of Plaintiff and of the members of the Classes (as defined in Paragraph 16).

13 6. Plaintiff does not know the true names, capacities, relationships, and/or the extent
14 of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this
15 Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such
16 fictitious names. Plaintiff prays for leave to amend this Complaint when their true names and
17 capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each
18 fictitiously named Defendant is and was responsible in some way for the alleged wage-and-hour
19 violations and other wrongful conduct that subjected Plaintiff and the Classes, as defined below,
20 to the illegal employment practices, wrongs and injuries complained of herein. All references in
21 this Complaint to “Defendants” shall be deemed to include all DOE Defendants.

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 acted 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 the
5 Classes (as defined in Paragraph 16).

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Defendants engage in the selling and maintenance of various recreation and utility
8 vehicles and equipment. Plaintiff was employed by Defendants as a non-exempt “Lot Porter” in
9 their Sales/Service Department from approximately October 2023 until approximately April
10 2024. Throughout Plaintiff’s employment with Defendants, Plaintiff worked at Defendants’ Paso
11 Robles location.

12 10. During Plaintiff’s employment with Defendants, Plaintiff worked in excess of 8.0
13 hours per workday and/or in excess of 40.0 hours per workweek, but did not receive overtime
14 compensation at one and one-half times his regular rate of pay for working overtime hours.
15 Specifically, Plaintiff and other non-exempt employees received bonuses, including “2% Sales
16 Setup Incentive,” “Shop Incentive,” and/or other forms of pay that must be included in the
17 “regular rate” of pay (collectively, “Incentive Pay”). However, despite Defendants’ payment of
18 Incentive Pay to Plaintiff and other non-exempt employees, Defendants have failed to properly
19 incorporate Incentive Pay into Plaintiff’s and other non-exempt employees’ “regular rate” of pay
20 when calculating overtime compensation, thereby underpaying overtime wages to Plaintiff and
21 other non-exempt employees.

22 11. Defendants failed to provide Plaintiff and other non-exempt employees with all
23 legally compliant meal periods due to Defendants’ unlawful meal period policies/practices that
24 resulted in late (commencing after the fifth hour of work), short (less than 30 minutes of net rest)
25 and missed meal periods. Specifically, Plaintiff and other non-exempt employees routinely
26 received “late” (i.e., starting after the completion of the fifth hour of work) meal periods, because
27 Plaintiff’s and other non-exempt employees’ work demands frequently prevented them from
28 taking a meal period until after the completion of five hours of work. Plaintiff’s meal periods

1 were also often “short” (less than 30 minutes) because Plaintiff and other non-exempt employees
2 were required to cut their meal periods short in order to perform work-related tasks. Plaintiff was
3 also not provided with uninterrupted meal periods as his meal periods were constantly interrupted
4 due to work demands imposed by Defendants. On those occasions when Plaintiff was not
5 provided with all legally-required meal periods to which he was entitled, Defendants did not
6 compensate Plaintiff with the required meal period premium for each workday in which he
7 experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and
8 belief, during at least a portion of the putative class period, Defendants maintained no payroll
9 code for paying meal period premiums under Labor Code § 226.7.

10 12. Defendants have also failed to authorize and permit all required rest periods for
11 Plaintiff and other non-exempt employees as Defendants’ rest period policies/practices failed to
12 authorize and permit employees to take an off-duty rest period of at least 10 minutes for every
13 four hours worked, or major fraction thereof. Specifically, based upon information and belief,
14 Defendants never authorized or permitted Plaintiff and other non-exempt employees to take any
15 off-duty rest periods. Moreover, based upon information and belief, Plaintiff and other non-
16 exempt employees were required to remain on the premises during off-duty rest periods. Further,
17 on occasions when Plaintiff and other non-exempt employees were not authorized and permitted
18 to take all lawful rest periods to which they were entitled, Defendants failed to pay Plaintiff and
19 other non-exempt employees an additional hour of premium pay at their respective regular rates
20 of pay, which includes Incentive Pay, for each workday in which a rest period violation occurred,
21 as required by Labor Code section 226.7. Upon information and belief, Defendants failed to
22 maintain pay codes for the payment of rest period premium payments as required by Labor Code
23 section 226.7.

24 13. Defendants also failed to reimburse Plaintiffs and other non-exempt employees for
25 all reasonable and necessary work expenditures, including, but not limited to, personal cellular
26 phone expenses. Specifically, Plaintiff and other non-exempt employees were required to
27 participate in a group chat using their personal cell phones for work-related communications.
28 Plaintiff’s supervisor called and/or text messaged Plaintiff and other non-exempt employees in

1 this group chat every workday, however, Defendants failed to reimburse Plaintiff and other non-
2 exempt employees for their cell phone expenses. As a result, Plaintiff and other non-exempt
3 employees were not reimbursed for these work-related expenditures as required pursuant to Labor
4 Code § 2802.

5 14. Upon information and belief, Defendants' policies and/or procedures failed to
6 properly provide for sick pay in a manner that fully complies with Labor Code § 246. For example,
7 during the entire duration of Plaintiff's employment with Defendants, Plaintiff's paystubs
8 consistently and uniformly show an accrual of exactly twenty-four (24) hours of sick leave.
9 Defendants did not provide Plaintiff with sick pay wages in compliance with California law.

10 15. As a result of Defendants' failure to compensate Plaintiff and other non-exempt
11 employees for all overtime wages, all meal and rest period premium wages, as well as Defendants'
12 failure to properly list and pay all accrued sick pay, Defendants maintained inaccurate payroll
13 records and failed to issue accurate, compliant, itemized wage statements. As a further result of
14 Defendants' failure to pay all overtime wages and failure to pay all meal and rest period premium
15 wages, Defendants failed to timely pay all final wages to Plaintiff and other former employees
16 upon their separation of employment from Defendants. Additionally, Defendants failed to pay
17 Plaintiff and other non-exempt employees all sick time at the separation of Plaintiff's and other
18 non-exempt employees' employment with Defendants.

19 **CLASS ACTION ALLEGATIONS**

20 16. Class Definitions: Plaintiff brings this Complaint on behalf of himself and the
21 following Classes pursuant to Section 382 of the Code of Civil Procedure:

22 a. The Overtime Class consists of all of Defendants' current and former non-exempt
23 employees in California who worked more than eight (8) hours per day and/or
24 forty (40) hours per week and received Incentive Pay during a corresponding time
25 period, during the four years immediately preceding the filing of the Complaint
26 through the present.

27 b. The Meal Period Class consists of all of Defendants' current and former non-
28 exempt employees in California who: (i) worked at least one shift in excess of 5.0

hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present.

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

d. The Wage Statement Class consists of all of Defendants' current and former non-exempt employees in California who have received a wage statement, during the one year immediately preceding the filing of the Complaint through the present.

e. The Expense Reimbursement Class consists of all Defendants' current and former non-exempt employees in California who were not reimbursed for the use of their personal cellular phones, during the four years immediately preceding the filing of the Complaint through the present.

f. The Sick Pay Class consists of all of Defendants' current and former non-exempt employees in California who were paid sick pay at less than their regular rate of pay, during the four years immediately preceding the filing of the Complaint through the present.

g. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the Overtime Class, and/or Rest Period Class, and/or Meal Period Class, and/or all former non-exempt employees who were not paid all sick pay at the regular rate of pay, during the four years immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff, at this time; however, it is estimated that the number is in excess of one hundred (100) individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- 5 i. Whether Defendants violated the applicable Labor Code provisions, including, but
6 not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to
7 perform overtime work and not paying for said work in accordance with the
8 overtime laws of the State of California;
- 9 ii. Whether Defendants provided legally compliant meal periods to members of the
10 Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 11 iii. Whether Defendants correctly paid meal period premium payments for non-
12 compliant meal periods pursuant to Labor Code § 226.7;
- 13 iv. Whether Defendants authorized and permitted legally compliant rest periods to
14 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 15 v. Whether Defendants correctly paid rest period premium payments for non-
16 compliant rest periods pursuant to Labor Code § 226.7;
- 17 vi. Whether Defendants' reimbursement policies/practices failed to reimburse or
18 indemnify Expense Reimbursement Class members for necessary business
19 expenditures, thereby depriving members of the Expense Reimbursement Class of
20 all reimbursements to which they have been entitled as a matter of law;
- 21 vii. Whether Defendants furnished legally compliant wage statements to members of
22 the Wage Statement Class pursuant to Labor Code §226;
- 23 viii. Whether Defendants failed to pay Plaintiff and other non-exempt employees' their
24 sick pay pursuant to Labor Code § 246; and
- 25 ix. Whether Defendants' policies and/or practices for the timing and amount of
26 payment of final wages to members of the Waiting Time Class at the time of their
27 separation of employment were lawful.

28 **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 overtime, reimbursement, and meal and rest period policies/practices. As such, common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime wages owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, and was not reimbursed for use of his personal cellphone for business related purposes.

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 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 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 were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with

1 their vastly superior financial and legal resources. Moreover, requiring each member of the
2 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
3 employees who would be disinclined to file an action against their former and/or current employer
4 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
5 employment. Further, the prosecution of separate actions by the individual class members, even
6 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
7 with respect to the individual class members against Defendants herein; and which would
8 establish potentially incompatible standards of conduct for Defendants; and/or legal
9 determinations with respect to individual class members which would, as a practical matter, be
10 dispositive of the interest of the other class members not parties to adjudications or which would
11 substantially impair or impede the ability of the class members to protect their interests. Further,
12 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
13 individual prosecution considering all of the concomitant costs and expenses attending thereto.
14 As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

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

23 25. At all times relevant herein, Defendants were required to properly pay Plaintiff
24 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
25 Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee
26 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
27 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage
28 Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of

1 pay for work in excess of 12 hours each workday and/or for work in excess of 8 hours on the
2 seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime
3 hours, but did not compensate Plaintiff or members of the Overtime Class at one and one-half
4 (1½) times their regular rate of pay for such hours.

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

8 27. The foregoing policies and practices are unlawful and create entitlement to
9 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
10 premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and
11 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
12 1, and Code of Civil Procedure § 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

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

24 30. As a result, Defendants are responsible for paying premium compensation for meal
25 period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 7, including interest
26 thereon, statutory penalties, civil penalties, and costs of suit.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **WAGE STATEMENT VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
24 and the Wage Statement Class with wage statements that complied with the requirements of Labor
25 Code § 226(a).

26 37. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
27 with accurate and complete, itemized wage statements resulted in actual injury, as said failures
28 led to, among other things, the non-payment of all overtime wages and meal and rest period

premium wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

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

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES (AGAINST ALL DEFENDANTS)

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

40. 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 his or her obedience to the directions of the employer."

41. 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."

42. Due to Defendants' unlawful policy and practice of requiring employees to use their personal cellular phones for work-related purposes, and failing to pay reimbursements to Plaintiffs and members of the Employee Expense Class, Defendants have violated Labor Code §2802.

43. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 7, § 9, Plaintiff and members of the Expense Reimbursement Class were damaged in sums, which will be shown according to proof.

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

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

5 **SIXTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

19 49. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
20 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
21 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
22 to the requirements of Cal. Labor Code §§ 201-203.

23 50. Defendants' failure to pay all final wages was willful within the meaning of Cal.
24 Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the
25 Waiting Time Class their earned wages upon separation from employment results in a continued
26 payment of daily wages up to thirty days from the time the wages were due.

27 51. Plaintiff and members of the Waiting Time Class are entitled to compensation
28 pursuant to Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY SICK PAY WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 53. The Healthy Workplaces, Healthy Families Act of 2014 requires that employers
6 provide employees with at least three paid sick days per year. Cal. Lab Code § 245 et seq. Cal
7 Lab. Code § 246(b)(1) provides that an employee shall accrue paid sick days at a rate of not less
8 than one hour per every 30 hours worked. Cal Lab. Code § 233 provides that an employer must
9 permit an employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the
10 employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an employee is
11 entitled to sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
12 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to
13 sick pay wages, which an employer must calculate and compensate based on one of two
14 calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner
15 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
16 or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for
17 nonexempt employees shall be calculated by dividing the employee's total wages, not including
18 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior
19 90 days of employment."

20 54. As a matter of policy and practice, Plaintiff, is informed and believes, and that
21 basis states, that Defendants failed to provide sick pay and/or failed to pay sick pay wages to
22 Plaintiff and the other members of the Sick Pay Class at the correct rate of pay.

23 55. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
24 during each calendar month and are to be paid no later than the payday for the next regular payroll
25 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that,
26 upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than the
27 payday for the next regular payroll period after accrued sick leave is used as paid sick time.
28 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages

1 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code §
2 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after
3 an employee quits his or her employment, unless the employee has given 72-hour notice of his or
4 her intention to quit, in which case the employee is entitled to his or her wages at the time of
5 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
6 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code
7 §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at
8 the same rate until paid, but the wages shall not continue for more than thirty (30) days.

9 56. As alleged herein and as a matter of policy and practice, Defendants routinely
10 failed to provide and/or underpaid sick pay wages and thus did not timely pay Plaintiff and the
11 other members of the Sick Pay Class all owing and underpaid sick pay wages. As a result,
12 Defendants violated Cal. Lab. Code § 246, among other Labor Code provisions. Because
13 Defendants willfully failed to provide and/or timely pay Plaintiff and the other members of the
14 Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

15 **EIGHTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

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

19 58. Defendants have engaged and continue to engage in unfair and/or unlawful
20 business practices in California in violation of Business & Professions Code § 17200 *et seq.*, by:
21 (a) failing to compensate Plaintiff and members of the Overtime Class with all overtime wages;
22 (b) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to
23 which they are entitled, and/or failing to pay them meal period premium payments at the correct
24 rate of pay; (c) failing to authorize and permit all required duty-free rest periods to Plaintiff and
25 members of the Rest Period Class, and/or failing to pay them rest period premiums payments; (d)
26 knowingly failing to furnish Plaintiff and the Wage Statement Class with all accurate and
27 complete, itemized wage statements in violation of Labor Code § 226; (e) failing to indemnify
28 members of the Expense Reimbursement Class for all necessary business expenses; (f) failing to

indemnify members of the Sick Pay Class for all unpaid sick pay wages; and (g) failing to timely pay all final wages to the Waiting Time Penalty Class.

59. 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.

60. 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 any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

61. The acts complained of herein occurred within the last four years immediately preceding the filing of the Plaintiff's Complaint.

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

64. 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 per pay period; (3) \$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 (4) \$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, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of

separation in violation of Labor Code §§ 201, 202, and 203;

g. Failing to pay Plaintiff, the Sick Pay Class, and other aggrieved employees sick pay at the employee's regular rate of pay in violation of Labor Code §§ 245 *et seq.*, 246, 1194, 1194.2, and 1197;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198; and

j. Requiring Plaintiff and other aggrieved employees to agree, in writing, to an illegal term or condition by agreeing to authorize a consumer report despite not seeking a position for which such consumer reports may be sought, in violation of Labor Code § 432.5.

65. On June 3, 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 64 (a)-(j). 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.

66. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

67. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf

1 this suit is brought against Defendants, as follows:

- 2 1. For an order certifying the proposed Classes;
- 3 2. For an order appointing Plaintiff as representative of the Classes;
- 4 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 5 4. Upon the First Cause of Action, for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 7 5. Upon the Second Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 9 6. Upon the Third Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 11 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code
12 § 226 *et. seq.*;
- 13 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
14 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 15 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
16 Labor Code §§ 201-203;
- 17 10. Upon the Seventh Cause of Action, penalties, compensatory, consequential,
18 general and special damages according to proof pursuant to Labor Code § 246;
- 19 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
20 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
21 practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;
- 22 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
23 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
24 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
25 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
26 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
27 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
28 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$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 (4) \$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 64 (a)-(j);

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

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, 2699(g), 2802(c), and Code of Civil Procedure § 1021.5; and

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

Dated: August 8, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: August 8, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff