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County of Placer
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

SAURABH PATEL, as an individual on behalf
of himself and on behalf of all others similarly
situated,

Plaintiff,

vs.

BARTON & ASSOCIATES, INC., a Delaware
Corporation; KAISER FOUNDATION
HOSPITALS, a California Nonprofit
Corporation, and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: S-CV-0053433

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

- (1) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (2) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENSES (LABOR CODE §§
2802, 2804);**
- (3) FAILURE TO PAY ALL WAGES
(LABOR CODE §§ 221-223);**
- (4) WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203); and**
- (6) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Dr. Saurabh Patel, MD, (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against Barton & Associates, Inc., a Delaware Corporation (“Barton Staffing”), Kaiser
4 Foundation Hospitals, a California Nonprofit Corporation (“Kaiser Hospitals”), and DOES 1 to
5 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 action for recovery of unpaid wages, unreimbursed expenses, penalties, and damages under
9 California Business and Professions Code § 17200, *et. seq.*, Labor Code §§ 98.6, 201-204, 221-
10 223, 226, 1102.5, 2802, 2804, and 2698 *et seq.*, and Industrial Welfare Commission Wage Order
11 No. 5 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This class action
12 is 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 Placer. Defendants own, maintain offices, transact business, have an
19 agent or agents within the County of Placer, and/or are otherwise found within the County of
20 Placer, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). During the four years
23 immediately preceding the filing of the Complaint in this action and within the statute of
24 limitations periods applicable to each cause of action pled herein, Plaintiff was an employee of
25 Defendants. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed to him by
27 California Labor Code §§ 98.6, 201-204, 226, 1102.5, 2802, 2804, and 2698 *et seq.*, and
28

1 California Business and Professions Code § 17200 *et seq.*, and Wage Order 5, which sets
2 employment standards for the public housekeeping industry, including hospitals.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 do) business by operating and staffing hospitals, and employed Plaintiff and other, similarly-
6 situated employees within Placer County and the state of California and, therefore, were (and are)
7 doing business in Placer County and the State of California.

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

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

21 7. Plaintiff is further informed and believes, and thereon alleges, that each of the
22 Defendants herein, whether designated by real or fictitious name, are, and at all times relevant
23 hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as
24 well as the agents of all Defendants, and in doing things and acts herein alleged and complained
25 of or in failing to do that which they should have done, were acting within the scope of
26 employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified
27 each and every one of the acts or omissions alleged herein.
28

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.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Defendant Barton Staffing is a leading national healthcare staffing company.
8 Defendant Kaiser Hospitals owns and operates medical centers throughout California. Plaintiff is
9 a medical doctor who was placed by Defendant Barton Staffing to perform work in a hospital
10 owned and operated by Defendant Kaiser Permanente in the city of Roseville, CA. Plaintiff
11 performed work for Defendants from approximately February to October 2023. Plaintiff's job
12 duties included, but were not limited to, performing scheduled patient visits, seeing urgent
13 referred patients, performing telehealth visits, and being on-call to answer questions and respond
14 to medical emergencies. Throughout Plaintiff's employment with Defendants, Defendants
15 classified Plaintiff as an independent contractor. At the time of Plaintiff's hire by Defendants,
16 Plaintiff expressly and validly opted-out of Defendants' arbitration clause.

17 10. At the time that Plaintiff was hired by Defendants, Plaintiff, and all other similarly
18 situated individuals, were required to sign a "Client Services Agreement" that expressly classified
19 them as independent contractors. However, Plaintiff and other similarly situated individuals were
20 misclassified as independent contractors because Kaiser Hospitals maintained control over the
21 details of Plaintiff's work, supplied the instrumentalities, tools, and place of the work, Plaintiff
22 was not engaged in a distinct occupation from Kaiser Hospitals, and the work being performed
23 by Plaintiff was part of the regular business of Kaiser Hospitals. *See S.G. Borello & Sons, Inc. v.*
24 *Department of Industrial Relations* (1989) 48 Cal.3d 341, 350-51; and Labor Code § 2783(b). As
25 a result, Defendants willfully misclassified Plaintiff and other similarly situated individuals as
26 independent contractors in violation of Labor Code § 226.8.

27 11. The "Client Services Agreement" also included an illegal non-compete clause
28 (referred to as "Conversion") which prohibited Plaintiff from entering into any employment or

1 contractual relationship with any client at which Plaintiff was placed to work by Defendant Barton
2 Staffing for a period of two years following the end of the assignment, unless Defendant Barton
3 Staffing was paid a “Conversion fee.” This non-compete clause is void under California law,
4 regardless of whether the worker is classified as an employee or as an independent contractor,
5 and regardless of whether the contract was entered into outside of California. *See* Business and
6 Professions Code § 16600(a) (“every contract by which anyone is restrained from engaging in a
7 lawful profession, trade, or business of any kind is to that extent void”); Business and Professions
8 Code § 16600.5(a) (“Any contract that is void under this chapter is unenforceable regardless of
9 where and when the contract was signed.”); *Bosley Medical Group v. Abramson* (1984) 161
10 Cal.App.3d 284, 288 (“[A]n agreement by an employee *or independent contractor* not to compete
11 with his employer after leaving that employment is void”) (emphasis added).

12 12. The illegal non-compete clause was specifically enforced against Plaintiff, as
13 Plaintiff was explicitly told by a representative of Kaiser Hospitals in an e-mail that they would
14 want to hire him directly but-for the existence of the illegal non-compete clause, and upon
15 information and belief, the illegal non-compete clause has resulted in other medical professionals
16 being denied employment within the state of California. As a result, Defendants have engaged in
17 unfair business practices in violation of California law. *See Application Group, Inc. v. Hunter*
18 *Group, Inc.* (1998) 61 Cal.App.4th 881 (“[T]he trial court did not err in finding Hunter’s use of a
19 covenant not to compete in violation of Section 16600 to be a violation of section 17200 as well.”).

20 13. Due to Defendants’ classification of Plaintiff and other similarly situated
21 individuals as independent contractors, Defendants failed to reimburse Plaintiff and other
22 similarly situated individuals for all necessary business expenses in violation of Labor Code §
23 2802. Specifically, Plaintiff was required to utilize his own personal laptop computer for use while
24 performing work at Kaiser Hospitals and was specifically told by Kaiser Hospitals that purported
25 independent contractors would not be provided with company-issued laptop computers and would
26 not be reimbursed for any associated expenses, despite the fact that a laptop computer was a
27 necessary tool to complete the core functions of the job. As a further result of being classified as
28 an independent contractor, Plaintiff and other similarly situated individuals were required to pay

1 self-employment taxes that they would otherwise not be required to pay had they been classified
2 as employees.

3 14. Defendants also maintained a policy of only paying Plaintiff and other similarly
4 situated individuals for “undisputed” fees owed, and reserved the right to unilaterally dispute
5 payment for work that was actually performed, or to unilaterally reduce the amount of hours that
6 Defendants would pay for, resulting in Plaintiff and other similarly situated individuals frequently
7 not being paid for all hours worked.

8 15. As a result of failing to pay Plaintiff and other similarly situated individuals all
9 wages earned, Defendants maintained inaccurate records, issued inaccurate wage statements, and
10 failed to timely pay all earned wages at the time of separation to separating employees.
11 Defendants also issued facially non-compliant wage statements that did not include the inclusive
12 dates of the pay period in violation of Labor Code § 226(a).

13 **CLASS ACTION ALLEGATIONS**

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

16 a. The Non-Compete Class consists of all individuals performing work for
17 Defendants in California who are not subject to arbitration agreements and who were
18 subject to “Conversion” clauses or other substantially similar non-compete clauses during
19 the four years immediately preceding the filing of this action through the present.

20 b. The Unreimbursed Expenses Class consists of all individuals who were
21 placed by Barton Staffing at Kaiser Hospitals in California who are not subject to
22 arbitration agreements and who were subject to Kaiser Hospital’s reimbursement policies
23 and practices, during the four years immediately preceding the filing of this action through
24 the present.

25 c. The Unpaid Wages Class consists of all individuals who were placed by
26 Barton Staffing at Kaiser Hospitals in California who are not subject to arbitration
27 agreements and who were not paid for all hours worked as a result of Defendants disputing
28

1 their fees during the four years immediately preceding the filing of this action through the
2 present.

3 f. The Wage Statement Class consists of all individuals who were placed by
4 Barton Staffing at Kaiser Hospitals in California who are not subject to arbitration
5 agreements and who received a wage statement from Defendants during the one year
6 immediately preceding the filing of this action through the present.

7 g. The Waiting Time Class consists of all formerly employed members of the
8 Minimum Wage Class who separated their employment from Defendants during the three
9 years immediately preceding the filing of this action through the present.

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

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

- 19 i. Whether Defendants' use of non-compete clauses violates California law;
20 ii. Whether Plaintiff and members of the Unpaid Wages Class were compensated for
21 all hours actually worked;
22 v. Whether Defendants' policies and/or practices of reimbursing necessary business
23 expenses for members of the Unreimbursed Expenses Class violated California law;
24 vi. Whether Defendants furnished legally compliant wage statements to members of
25 the Wage Statement Class pursuant to Labor Code § 226.
26 vii. Whether Defendants' policies and/or practices for the timing and amount of
27 payment of final wages to members of the Waiting Time Class at the time of separation from
28 employment were unlawful;

1 19. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Classes. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member. As such, the common questions
5 predominate over individual questions concerning each individual class member's showing as to
6 his or her eligibility for recovery or as to the amount of his or her damages.

7 20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
8 Plaintiff was performing work in California during the statute(s) of limitation applicable to each
9 cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members
10 of the Classes, was subject to a non-compete clause that was enforced against him, was classified
11 as an independent contractor, was not paid for all hours worked, was not reimbursed for necessary
12 business expenses, was furnished with inaccurate and incomplete wage statements, and was not
13 paid all wages owed at the time of his separation.

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

20 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
21 an important public interest in establishing minimum working conditions and standards in
22 California. These laws and labor standards protect the average working employee from
23 exploitation by employers who have the responsibility to follow the laws and who may seek to
24 take advantage of superior economic and bargaining power in setting onerous terms and
25 conditions of employment. The nature of this action and the format of laws available to Plaintiff
26 and members of the Classes make the class action format a particularly efficient and appropriate
27 procedure to redress the violations alleged herein. If each employee were required to file an
28 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they

1 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
2 their vastly superior financial and legal resources. Moreover, requiring each member of the
3 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
4 employees who would be disinclined to file an action against their former and/or current employer
5 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
6 employment. Further, the prosecution of separate actions by the individual class members, even
7 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
8 with respect to the individual class members against Defendants herein; and which would
9 establish potentially incompatible standards of conduct for Defendants; and/or legal
10 determinations with respect to individual class members which would, as a practical matter, be
11 dispositive of the interest of the other class members not parties to adjudications or which would
12 substantially impair or impede the ability of the class members to protect their interests. Further,
13 the claims of the individual members of the class are not sufficiently large to warrant vigorous
14 individual prosecution considering all of the concomitant costs and expenses attending thereto.
15 As such, the Classes identified in Paragraph 17 are maintainable as a Class under § 382 of the
16 Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

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

21 24. Defendants have engaged and continue to engage in unfair and/or unlawful
22 business practices in California in violation of California Business and Professions Code § 17200
23 et seq., by classifying Plaintiff and the members of the Classes as independent contractors,
24 subjecting them to illegal non-compete agreements, failing to pay wages for all hours worked,
25 failing to reimburse employees for all necessary business expenses, failing to furnish accurate and
26 complete itemized wage statements, and failing to pay all earned wages at the time of separation.

27 25. Defendants' utilization of these unfair and/or unlawful business practices deprived
28 Plaintiff and continues to deprive members of the Classes of compensation to which they are

1 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
2 over Defendants' competitors who have been and/or are currently employing workers and
3 attempting to do so in honest compliance with applicable wage and hour laws.

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

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

10 28. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
12 of Defendants' current hourly non-exempt employees and to enforce important rights affecting
13 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
14 which he is entitled to recover under Business and Professions Code § 16600.5(e)(2) and Code of
15 Civil Procedure § 1021.5.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(AGAINST DEFENDANT KAISER HOSPITALS)**

19 29. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
20 fully set forth herein.

21 30. It was necessary for Plaintiff and members of the Unreimbursed Expenses Class
22 to incur expenses in the discharge of their job duties, including purchasing laptop computers and
23 paying self-employment taxes. Although Plaintiff and members of the Unreimbursed Expenses
24 Class incurred these expenses at the direction of Defendants and/or in the direct discharge of their
25 job duties, Defendants did not reimburse these employees for such necessary work expenditures
26 during the four years preceding the filing of the Complaint.

27 31. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
28 states that "an employer shall indemnify his or her employees for all necessary expenditures or

1 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
2 his or her obedience to the directions of the employer.”

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

8 33. As a proximate result of Defendants’ policies and/or practices in violation of Labor
9 Code §§ 2802 and 2804, Plaintiff and members of the Unreimbursed Expenses Class were
10 damaged in sums, which will be shown according to proof.

11 34. Plaintiff and members of the Unreimbursed Expenses Class are entitled to
12 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES**

19 **(AGAINST DEFENDANT KAISER HOSPITALS)**

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

21 37. This cause of action is brought pursuant to Labor Code §§ 204 and 221-223 which
22 provide that all non-exempt employees are entitled to be paid all wages owed at the rate agreed
23 upon with their employer, and provide a private right of action for the failure to pay all wages
24 owed at the agreed-upon rate for all work performed.

25 38. At all times relevant herein, Defendants were required to properly compensate
26 Plaintiff and the members of the Unpaid Wages Class for all hours worked at the rate agreed to
27 with Defendants, pursuant to California Labor Code §§ 221-223. At all relevant times herein,
28 Defendants required Plaintiff and the members of the Unpaid Wages Class to remain under

1 Defendants' control and perform work without paying them therefor, which resulted in Plaintiff
2 and the members of the Unpaid Wages Class to earn less than the agreed rate for their work. This
3 pattern and practice by Defendants of failing to pay the agreed-upon rate for all work performed
4 violates the Labor Code and constitutes unjust enrichment.

5 39. The foregoing practices and policies are unlawful and create entitlement to
6 recovery by Plaintiff and the members of the Unpaid Wages Class in a civil action for the unpaid
7 amount of agreed-upon wages owing, including interest thereon, as well as statutory penalties,
8 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6,
9 221, and 558, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

10 **FOURTH CAUSE OF ACTION**

11 **WAGE STATEMENT VIOLATIONS**

12 **(AGAINST DEFENDANT KAISER HOSPITALS)**

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

14 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
16 and the Wage Statement Class with accurate and complete itemized wage statements that
17 included, among other requirements, all hours actually worked, total gross wages earned, and the
18 inclusive dates of the pay period, in violation of Labor Code § 226.

19 42. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
20 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
21 to, among other things, the non-payment of all wages, and deprived them of the information
22 necessary to identify the discrepancies in Defendants' reported data.

23 43. Defendants' failures create an entitlement to recovery by Plaintiff and members of
24 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
25 Code § 226, including statutory penalties, civil penalties, reasonable attorney's fees, and costs of
26 suit according to California Labor Code §§ 226 and 226.3.

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1 **FIFTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST DEFENDANT KAISER HOSPITALS)**

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

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

11 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
13 to them at the time of their separation which includes, among other things, unpaid wages. Further,
14 Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy
15 and practice, Defendants continue to fail to pay members of the Waiting Time Penalty Class all
16 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
17 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
18 Labor Code § 203.

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

24 **SIXTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **(AGAINST ALL DEFENDANTS)**

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

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

- 17 a. By classifying Plaintiff and other aggrieved employees as independent
18 contractors in violation of Labor Code § 226.8;
- 19 b. By failing to pay Plaintiff and other aggrieved employees all wages owed in
20 violation of Labor Code §§ 221 – 223;
- 21 c. By failing to reimburse Plaintiff and other aggrieved employees for all work-
22 related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- 23 d. By failing to furnish Plaintiff and other aggrieved employees with accurate and
24 compliant itemized wage statements in violation of Labor Code § 226;
- 25 e. By failing to timely pay all final wages due to Plaintiff and other aggrieved
26 employees in violation of Labor Code §§ 201- 203;
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- 1 f. By failing to pay Plaintiff and other aggrieved employees all wages earned at
2 least twice during each calendar month in violation of Labor Code § 204; and
3 g. By failing to maintain accurate records on behalf of Plaintiff and aggrieved
4 employees in violation of Labor Code §§ 558 and 1174.

5 50. On August 2, 2024, Plaintiff notified Defendants via certified mail, and notified
6 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
7 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
8 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
9 California Labor Code identified in Paragraph 49 (a)-(g). Now that sixty-five days have passed
10 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
11 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
12 administrative requirements for bringing a claim under the Private Attorneys General Act with
13 respect to these violations.

14 51. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved
15 Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’ current and
16 former employees who worked for Defendants in California at any time between August 2, 2023,
17 and the present.

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

22 **PRAYER**

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

- 25 1. For an order certifying the proposed Classes;
26 2. For an order appointing Plaintiff as representative of the Classes;
27 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
28

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

5 5. Upon the Second Cause of Action for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

7 6. Upon the Third Cause of Action, for all unpaid wages owing, including interest
8 thereon, pursuant to Labor Code §§ 204, 218.5, 218.6, 221, and 558;

9 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code
10 § 226;

11 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
12 Labor Code §§ 201-203;

13 9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
15 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
16 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
17 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
18 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
19 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
20 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
21 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
22 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
23 violation and \$200 for each subsequent violation per employee per pay period for those violations
24 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
25 violations identified in Paragraph 49 (a)-(g);

26 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor
27 Code § 218.6 and Civil Code §§ 3287 and 3289;
28

1 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code
2 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and 2698 *et seq.*, Business and Professions Code §
3 16600.5(e)(2), and Code of Civil Procedure § 1021.5.

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

5
6 Dated: October 7, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:


Fletcher W. Schmidt
Attorney for Plaintiff

9
10 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: October 7, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:


Fletcher W. Schmidt
Attorney for Plaintiff