

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
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 KERN

CARLOS ANGEL OROS, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

NGC CONSTRUCTION, INC., a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. BCV-24-104000

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, AND 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, AND
558)**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, AND
558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

**(8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Carlos Angel Oros (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“Complaint”) against NGC Construction, Inc., a California Corporation; and Does 1 through 100, inclusive (collectively “Defendants”), and on information and belief allege as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 204, 226 *et seq.*, 226.2, 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.*, and Industrial Welfare Commission Wage Order No. 16-2001 (“Wage Order 16”), in addition to seeking declaratory 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 judicial 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 Kern County. Defendants own, maintain offices, transact business, have an agent or agents within the County of Kern, and/or otherwise are found within the County of Kern, and Defendants are within the jurisdiction of this Court for purposes 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, residing in the County of Kern. During the four years immediately preceding the filing of the Complaint in this action, and within the statute

1 of limitations periods applicable to each cause of action pled herein, Plaintiff has been employed
2 by Defendants as a non-exempt employee in the County of Kern. Plaintiff was, and is, a victim
3 of Defendants' policies and/or practices complained of herein, lost money and/or property, and
4 has been deprived of the rights guaranteed by California Labor Code §§ 204, 226 *et seq.*, 226.2,
5 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*,
6 California Business and Professions Code §§ 17200 *et seq.*, and Wage Order 16, which sets
7 employment standards for the construction industry.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
10 do) business by operating a construction company specializing in drywall, paint, and lath, in the
11 state of California, specifically in the County of Kern, and therefore, were (and are) doing
12 business in the County of Kern 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 based thereon alleges, that at all times
22 mentioned herein, Defendants were and are the employers of Plaintiff and all similarly situated
23 employees.

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

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate a construction business in Kern County and the surrounding
10 areas specializing in drywall, paint, and lath. Plaintiff has worked for Defendants since 2023
11 through the present as a non-exempt employee. Plaintiff's primary job duty consists of applying
12 coat plaster using cement-based products.

13 10. Throughout his employment, Defendants have paid Plaintiff on a piece-rate basis,
14 whereby he is paid a pre-determined amount based on the number of houses he works on. At all
15 times during the relevant time period, Plaintiff and other non-exempt employees are compensated
16 exclusively on a piece-rate basis. Plaintiff and other non-exempt employees are responsible for
17 reporting their daily production totals (such as the number of houses they worked on) to
18 Defendants' supervisors, but are never required to track, record, or report their work hours. After
19 the workweek ends, Defendants take each employees' total production for that week and reverse
20 engineer this pre-determined wage amount in order to report employee wage totals as an artificial
21 hour total and hourly rate on employee wage statements.

22 11. Defendants have failed to pay Plaintiff and other non-exempt employees who are
23 compensated on a piece-rate basis for so-called "non-productive" time (i.e., hours that they were
24 working but were not actually performing piece-rate work), including, for example, time spent
25 driving between Defendants' yard to pick up materials and the job sites, preparing said materials,
26 waiting at the job sites for materials to be dropped off, and cleaning up materials and trash at the
27 job sites. Under Defendants' piece-rate compensation system, Plaintiff and other non-exempt
28 employees are not compensated for any time spent performing such tasks. As a result of these

practices, Defendants do not pay Plaintiff and other non-exempt employees for all hours worked at the minimum wage when they are being compensated on a piece-rate basis, as Defendants fail to pay Plaintiff and other non-exempt employees for non-productive hours. *See* Labor Code § 226.2(a)(4); *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws).

12. Additionally, Plaintiff and other non-exempt employees regularly work in excess of 8 hours per day and/or 40 hours per week. However, as a result of being compensated solely on a piece-rate basis, exclusive of overtime premiums, Plaintiff and other non-exempt employees are not compensated at one and one-half times their respective regular rates of pay for hours worked in excess of 8 hours per day and/or 40 hours per week and are therefore deprived of all overtime compensation earned. Further, as a result of Defendants' failure to record the hours Plaintiff and other non-exempt employees worked, Plaintiff and other non-exempt employees do not receive all overtime compensation to which they are entitled.

13. Defendants have also failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods to which they are entitled. Specifically, Defendants failed to provide Plaintiff and other non-exempt employees with timely, duty-free 30-minute meal periods for shifts in excess of 5.0 hours in length. Rather, Plaintiff's and other non-exempt employees' meal periods are frequently provided only after the conclusion of the fifth hour of work due to work demands and the piece-rate nature of Defendants' pay plan. Further, Defendants have failed to keep any timekeeping records of Plaintiff's and other non-exempt employees' purported meal periods altogether, in violation of Wage Order 16 and California law. Additionally, when Plaintiff and other non-exempt employees work shifts in excess of 10.0 hours, Plaintiff and other non-exempt employees are not provided a second duty-free, 30-minute meal period due to Defendants' unlawful meal period policies/practices which do not provide for *any* second meal periods, even for shifts in excess of 10.0 hours. Defendants also require Plaintiff and other non-exempt employees to keep their cell phones on at all times and to respond to any incoming calls at all times, including during purported meal periods. This policy fails to relinquish

1 all control over how Plaintiff and other non-exempt employees spend their meal periods, in
2 violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. As a result of these
3 practices, Defendants have failed to provide Plaintiff and other non-exempt employees with all
4 lawful meal periods to which they are entitled. Despite Defendants' failure to provide Plaintiff
5 and other non-exempt employees with all lawful meal periods, Defendants have also failed to
6 provide Plaintiff and other non-exempt employees with an additional hour of premium pay for
7 each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

8 14. In addition, Defendants do not properly compensate Plaintiff or other non-exempt
9 employees paid on a piece-rate basis for rest periods, as required under Labor Code section 226.2
10 and *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 ("under the rule of *Armenta*
11 *v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately compensated
12 in a piece-rate system."). See also Labor Code § 226.2 (requiring employees who are
13 compensated on a piece-rate basis to be separately compensated for rest periods at the higher of
14 the minimum wage or the average hourly rate of pay during the workweek). Despite paying
15 Plaintiff and other non-exempt employees solely on a piece-rate basis, Defendants do not pay
16 Plaintiff and other non-exempt employees any separate compensation for purported rest periods,
17 as required by California law. Moreover, throughout Plaintiff's employment, Defendants have
18 maintained an unlawful practice/policy whereby Plaintiff and other non-exempt employees are
19 required to carry their cell phones on their persons at all times, and respond to any incoming
20 phone calls regardless of when the call came in, including during Plaintiff's and other non-exempt
21 employees' purported meal periods and rest periods. Defendants require Plaintiff and other non-
22 exempt employees to immediately respond to incoming phone calls to discuss work instructions
23 and assignments with Defendants, even during purported meal periods or rest periods. This policy
24 fails to relinquish all control over how Plaintiff and other non-exempt employees spend their meal
25 and rest periods, in violation of *Augustus, supra*, 2 Cal.5th 257. Accordingly, Defendants have
26 also failed to provide Plaintiff and other non-exempt employees with an additional hour of
27 premium pay for each workday in which a rest period violation occurred, as required by Labor
28 Code § 226.7.

1 15. Defendants have also failed to reimburse Plaintiff and other non-exempt
2 employees for all necessary business expenses incurred, pursuant to Labor Code section 2802.
3 Specifically, Defendants require Plaintiff and other non-exempt employees to use their personal
4 cell phones to communicate throughout the day with supervisors and co-workers about their work
5 duties, including to send photos of completed job duties to Defendants' supervisors. In addition,
6 Defendants also require Plaintiff and other non-exempt employees to use their personal vehicles
7 to pick up construction materials from Defendants' yard to bring to the job sites; trips which can
8 occasionally exceed more than 20 minutes of drive time. Further, Defendants require Plaintiff and
9 other non-exempt employees to purchase all tools necessary to complete their job duties, such as
10 compressors, staplers, and hammers. Despite requiring Plaintiff and other non-exempt employees
11 to incur these necessary business expenditures, Defendants have failed to reimburse Plaintiff and
12 other non-exempt employees for said expenses, in violation of Labor Code section 2802. *See also*
13 *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137.

14 16. As a result of Defendants' failure to pay all minimum wages, overtime wages,
15 meal period premium wages, and rest period premium wages, Defendants maintain inaccurate
16 payroll records, and issue inaccurate wage statements to Plaintiff and other non-exempt
17 employees. Defendants' wage statements are also facially deficient because they fail to include
18 the number of piece-rate units earned and the applicable piece rate(s) in violation of Labor Code
19 § 226.

20 **CLASS ACTION ALLEGATIONS**

21 17. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
22 following Classes pursuant to Section 382 of the Code of Civil Procedure:

23 a. The Minimum Wage Class consists of all of Defendants' current and
24 former non-exempt employees who performed work that was compensated on a piece-
25 rate basis during the four years immediately preceding the filing of this action through the
26 present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees who worked more than 8 hours per day and/or 40 hours per week during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this action through the present.

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

e. The Reimbursement Class consists of all of Defendants' current and former non-exempt employees who used a personal cellular phone for work-related purposes and/or purchased tools for required work activities and/or used their personal vehicle for work-related purposes without reimbursement, during the four years immediately preceding the filing of this action through the present.

f. The Wage Statement Class consists of: (i) all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present; and/or (ii) any of Defendants' current and former non-exempt employees who performed work that was compensated on a piece-rate basis and received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present.

18. **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 Classes number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly

1 situated employees, which predominate over questions affecting only individual members
2 including, without limitation to:

3 i. Whether Defendants paid all minimum wages owed for all hours worked
4 to members of the Minimum Wage Class pursuant to Labor Code sections 1182.12, 1194,
5 1194.2, and 1197;

6 ii. Whether Defendants violated the applicable Labor Code provisions,
7 including, but not limited to, sections 510 and 1194 by requiring members of the Overtime
8 Class to perform overtime work and not paying for said work in accordance with the
9 overtime laws of the State of California;

10 iii. Whether Defendants' timekeeping policies/practices resulted in the failure
11 to properly compensate members of the Overtime Class and/or Minimum Wage class;

12 iv. Whether Defendants provided all legal compliant meal periods to members
13 of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

14 v. Whether Defendants authorized and permitted all lawful rest periods to
15 members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;

16 vi. Whether Defendants correctly paid meal period premium payments for non-
17 compliant meal periods pursuant to Labor Code § 226.7;

18 vii. Whether Defendants correctly paid rest period premium payments for non-
19 compliant rest periods pursuant Labor Code section 226.7;

20 viii. Whether Defendants correctly compensated employees for all "non-
21 productive" time worked, pursuant to Labor Code § 226.2;

22 ix. Whether Defendants correctly separately compensated employees for rest
23 periods pursuant to Labor Code § 226.2;

24 x. Whether Defendants failed to reimburse members of the Reimbursement
25 Class for all necessary business expenses incurred pursuant to Labor Code sections 2802
26 and 2804;

27 xi. Whether Defendants furnished legally compliant wage statements to
28 members of the Wage Statement Class pursuant to Labor Code § 226.

1 **20. 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, such as Defendants' uniform
5 minimum wage, overtime, meal period, rest period, reimbursement, and wage statement
6 policies/practices. As such, the common questions predominate over individual questions
7 concerning each individual class member's showing as to his or her eligibility for recovery or as
8 to the amount of his or her damages.

9 **21. Typicality:** Plaintiff's claims are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as non-exempt employees in California during the statutes
11 of limitation periods applicable to each cause of action pled herein. As alleged herein, Plaintiff,
12 like the members of the Classes, was deprived of all minimum and overtime wages owed, meal
13 period premium wages, rest period premium wages, was not reimbursed for his necessary
14 business expenses incurred, and was furnished with inaccurate and incomplete wage statements.

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

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

individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would 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 identified herein are maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

25. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

///

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

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

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

16 29. The foregoing practices and policies are unlawful and create an entitlement to
17 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
18 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
19 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 226.2,
20 558, 1194, 1197, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 **(AGAINST ALL DEFENDANTS)**

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

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

32. 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 16. Wage Order 16, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek.

33. At all times relevant herein, Defendants caused Plaintiff and other non-exempt employees to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

34. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Wage Order 16, § 10 and Labor Code §§ 226.7, 512, and 558 establish the right of employees to be provided with a duty-free meal period of not less than 30 minutes for a work period in excess of five (5) hours, and a second duty-free meal period of not less than 30 minutes for a work period in excess of ten (10) hours.

37. 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 16, § 10, for the reasons set forth in the General Factual Allegations and Class Definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates

of pay, in accordance with California Labor Code §§ 226.7 and 512.

38. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

40. Wage Order 16, § 11 and Labor Code §§ 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Further, Labor Code § 226.2 and *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013) mandate that employees paid pursuant to a piece-rate compensation system be compensated separately for their rest periods.

41. As alleged herein, and due to Defendants' unlawful rest period policies and/or practices, Defendants did not accurately compensate Plaintiff and members of the Rest Period Class for all rest periods to which they were legally entitled, and/or did not authorize and permit members of the Rest Period Class to take the paid rest periods to which they are legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest Period Class at their respective regular rates of pay for each violation, as required by California Labor Code § 226.7.

42. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.2, 226.7, 516, and 558, Wage Order 16, and Code of Civil Procedure § 1021.5.

///

///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

14 46. As alleged herein, due to Defendants’ unlawful reimbursement practices,
15 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
16 necessary business expenses incurred, including, among other things, a reasonable portion of
17 monthly personal cellular phone bills and the cost of tools.

18 47. As a proximate result of Defendants’ policies and/or practices in violation of Labor
19 Code sections 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to
20 damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to
21 proof at trial, pursuant to Labor Code § 2802.

22 **SIXTH CAUSE OF ACTION**

23 **WAGE STATEMENT PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

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

26 49. Plaintiff is informed and believes, and based thereon allege, that Defendants
27 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
28 and the Wage Statement Class with accurate and complete itemized wage statements that

1 included, among other requirements, all minimum and overtime wages owed, all meal period and
2 rest period premium wages earned, and the number of piece-rate units earned and the applicable
3 piece rate(s) in violation of Labor Code § 226 *et seq.*

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(AGAINST ALL DEFENDANTS)**

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

17 53. Defendants have engaged and continue to engage in unfair and/or unlawful
18 business practices in California in violation of California Business and Professions Code § 17200,
19 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages owed, meal
20 period and rest period premium wages, failing to reimburse for all necessary business expenses
21 incurred, and knowingly failing to furnish Plaintiff and members of the Wage Statement Class
22 with accurate and complete wage statements.

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

28 ///

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

5 56. The acts complained of herein occurred within the four years immediately
6 preceding the filing of this action. Plaintiff was compelled to retain the services of counsel to file
7 this court action to protect his interests and those of the Classes, to obtain restitution and
8 injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce
9 important rights affecting the public interest. Plaintiff has thereby incurred the financial burden
10 of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure §
11 1021.5.

12 **EIGHTH CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT**
14 **(AGAINST ALL DEFENDANTS)**

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

16 58. Defendants have committed several Labor Code violations against Plaintiff,
17 members of the Classes and other aggrieved employees. Plaintiff, an "aggrieved employee"
18 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
19 employees, brings this representative action against Defendants to recover the civil penalties due
20 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
21 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
22 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
23 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
24 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
25 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
26 employee pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
27 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
28 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 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;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of §§ 204, 510, 558, 1194 and 1198;
- c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- g. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

59. On November 20, 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 58 (a)-(h). 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.

60. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former employees who worked for Defendants in California at any time between November 20, 2023, and the present.

61. 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 this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

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

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

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

11. Upon the Eighth 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 58 (a)-(h);

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

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

///

///

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

2
3
4 Dated: January 27, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

5
6 By:



Fletcher W. Schmidt
Attorney for Plaintiff

7
8 **DEMAND FOR JURY TRIAL**

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

10
11 Dated: January 27, 2025

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By:



Fletcher W. Schmidt
Attorney for Plaintiff