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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

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

Plaintiff,

vs.

FENCEWORKS, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: 30-2018-01034150-CU-OE-CXC

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

- (1) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (2) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (3) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (4) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) UNPAID OR UNDERPAID REST
PERIOD TIME (LABOR CODE
§ 226.2)**
- (7) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226)**
- (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 Jimenez (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Fenceworks, Inc., a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 210, 226, 226.2, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order
10 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This Complaint
11 is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. 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 by Labor Code
27 §§ 201-203, 204, 210, 226, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition

1 Law”), and Wage Order 16, which sets employment standards for the construction industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by selling and installing fencing with eight locations in California,
5 including Riverside, Anaheim, Palmdale, Santa Paula, Bakersfield, Sacramento, Fresno and
6 Manteca. Defendants employed Plaintiff and other similarly-situated non-exempt employees
7 within the County of Orange and State of California and, therefore, were (and are) doing business
8 in the County of Orange and the State of California. At all relevant times, Plaintiff worked out
9 of Defendants’ Anaheim, California facility.

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

18 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
19 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

27 8. At all times mentioned herein, Defendants, and each of them, were members of
28 and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff was hired by Defendants as a non-exempt employee on or about August
6 13, 2013 and continued to work for Defendants until April 5, 2016, when he took an approved
7 medical leave of absence. Plaintiff worked as a “Fence Installer” out of Defendants’ Anaheim,
8 California location. Plaintiff’s job duties primarily consisted of driving to and from work sites
9 and installing/removing fencing. Upon information and belief, Plaintiff’s employment with
10 Defendants was terminated during Plaintiff’s medical leave.

11 10. During Plaintiff’s employment with Defendants, Plaintiff was regularly scheduled
12 to work from 6:00 a.m. to 2:00 p.m. or later, and Plaintiff also occasionally also worked on
13 weekends. Plaintiff clocked in and out at the beginning and end of his work shifts at Defendants’
14 Anaheim location, however, Plaintiff was not required to clock in and out for meal periods, which
15 were scheduled by his supervisor. As a result of Defendants’ unlawful meal period
16 policies/practices, Plaintiff was not often provided a timely 30-minute meal period commencing
17 before the conclusion of the fifth hour of work. Furthermore, when Plaintiff worked shifts over
18 10.0 hours, Plaintiff was not provided a second uninterrupted 30-minute meal period due to
19 Defendants’ unlawful meal period policies/practices which failed to provide a second meal period
20 during shifts in excess of 10.0 hours. On those occasions when Plaintiff was not provided with
21 all legally-compliant meal periods to which he was entitled, Defendants failed to compensate
22 Plaintiff with the required meal period premium(s) for each workday there was a meal period
23 violation as mandated by Labor Code § 226.7. Upon information and belief, at least during a
24 portion of the class period, Defendants maintained no mechanism for the payment of meal period
25 premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal
26 period was not provided to their non-exempt employees.

27 11. Plaintiff was not authorized and permitted to take all required rest periods due to
28 Defendants’ rest period policies/practices, which upon information and belief, failed to authorize

1 and permit Plaintiff to take all legally required rest periods. Specifically, Plaintiff regularly
2 worked shifts in excess of 6.0 hours, but was often not authorized and permitted to take a first or
3 second rest period. Additionally, when Plaintiff worked shifts in excess of 10.0 hours, he was
4 not authorized and permitted to take a third rest period, due to Defendants' rest period
5 policies/practices which fail to authorize and permit third rest periods for shifts in excess of 10.0
6 hours. On those occasions when Plaintiff was not provided with all legally-compliant rest periods
7 to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
8 premium(s) for each workday there was a rest period violation as mandated by Labor Code §
9 226.7. Upon information and belief, at least during a portion of the putative class period,
10 Defendants maintained no mechanism for the payment of rest period premium payments as
11 required by Labor Code § 226.7, in the event that Defendants failed to authorize and permit all
12 lawful rest periods to be taken.

13 12. During Plaintiff's employment with Defendants, Defendants did, and upon
14 information and belief, still utilize a timekeeping system that resulted in Plaintiff and other non-
15 exempt employees not being compensated for all hours actually worked. Specifically, Defendants
16 rounded Plaintiff and non-exempt employee's timekeeping entries in an uneven manner to a
17 quarter of an hour increment so that, over a period time, they were deprived of all earned minimum
18 and overtime wages. Upon information and belief, Defendants' timekeeping and payroll systems
19 regularly, systematically, and impermissibly rounded the hours worked by Plaintiff and other non-
20 exempt employees in Defendants' favor resulting, over a period of time, in the failure to properly
21 compensate Plaintiff and other non-exempt employees for all hours worked. As a result, Plaintiff
22 and other non-exempt employees were not compensated for all required minimum and overtime
23 wages.

24 13. During Plaintiff's employment with Defendants, Plaintiff often worked in excess
25 of eight (8) hours per workday and/or more than forty (40) hours per workweek, but did not
26 receive overtime compensation equal to one and one-half times his regular rate of pay for working
27 overtime hours. Specifically, Defendants paid Plaintiff non-discretionary incentive pay,
28 including "Incentive Reg," and other bonuses and forms of non-discretionary pay based on an

1 employee's performance, including the amount of fencing installed (hereinafter the
2 aforementioned forms of pay are collectively referred to as "Incentive Pay"). As a result of
3 receiving Incentive Pay, Defendants failed to accurately calculate Plaintiff's and other non-
4 exempt employee's regular rate of pay, thereby causing Plaintiff and other non-exempt employees
5 to be underpaid all required overtime wages.

6 14. Furthermore, upon information and belief, during Plaintiff's employment with
7 Defendants, Plaintiff was occasionally paid on a piece-rate basis, whereby Plaintiff was paid a
8 certain rate per fencing installation or work completed. While paid on a piece-rate basis, Plaintiff
9 was not separately compensated for time spent working on tasks which were not compensated on
10 a piece-rate basis, including for example, hours spent cleaning up at a worksite (i.e., non-
11 productive time). Because Defendants did not compensate for this non-productive time, they also
12 miscalculated the regular rate of pay, which is required to include the value of non-productive
13 time as a matter of law.

14 15. On the occasions when Plaintiff worked on a piece-rate basis, Plaintiff worked
15 shifts in excess of 3.5 hours, and was not provided with a paid rest period for every 4-hour period
16 worked, or major fraction thereof, because Defendants' piece-rate compensation plan failed to
17 separately compensate Plaintiff for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal.
18 App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did
19 not separately compensate drivers for their rest periods."). As a result, Plaintiff was not paid
20 wages for all hours worked, and was deprived of all rest period premium payments. Furthermore,
21 if Defendants separately compensated Plaintiff for rest periods, Defendants failed to accurately
22 calculate the rate at which Plaintiff was entitled to be compensated for such time pursuant to
23 Labor Code § 226.2. As a result, Plaintiff was underpaid wages owed for all hours worked, and
24 was deprived of all rest period premium payments.

25 16. As a result of Defendants' failure to pay all meal and rest period premiums, and
26 minimum and overtime wages, Defendants failed to pay Plaintiff all wages owed at the time of
27 separation from employment with Defendants, and failed to issue Plaintiff accurate and complete
28 itemized wage statements.

CLASS ACTION ALLEGATIONS

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

- a. The Meal Period Class consists of all Defendants' current and former non-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.
- b. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 3.5 hours; and/or (ii) performed work that was compensated on a piece-rate basis, and worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of the Complaint through the present.
- c. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping policies/practices, and/or (ii) performed work that was compensated on a piece-rate basis, during the four years immediately preceding the filing of the Complaint through the present.
- d. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and: (i) were subject to Defendants' timekeeping policies/practices; and/or (ii) received Incentive Pay during a corresponding time period, and/or (iii) performed work that was compensated on a piece-rate basis during a corresponding time period, during the four years immediately preceding the filing of the Complaint through the present.
- e. The Waiting Time Class consists of all Defendants' formerly employed members of the Meal Period Class, Rest Period Class, Minimum Wage Class, and Overtime Class, who separated their employment from Defendants in the three years immediately preceding the filing of the Complaint through the present.

1 f. The Wage Statement Class consists of all members of the Meal Period Class, Rest
2 Period Class, Minimum Wage Class, and/or Overtime Class who received a wage
3 statement from Defendants, during the one year immediately preceding the filing
4 of the Complaint through the present.

5 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
6 joinder of all members would be unfeasible and not practicable. The membership of the Classes
7 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
8 number greater than one hundred (100) individuals. The identity of such membership is readily
9 ascertainable via inspection of Defendants' employment records.

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

- 14 i. Whether Defendants provided all legally compliant meal periods to members of
15 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 16 ii. Whether Defendants authorized and permitted all legally compliant rest periods to
17 members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and
18 516;
- 19 iii. Whether Defendants provided meal or rest period premium payments for non-
20 compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- 21 iv. Whether Defendants lawfully paid premium wages for all overtime hours worked
22 to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194
23 and 1198;
- 24 v. Whether the piece-rate policies/procedures utilized by Defendants complied with
25 California law;
- 26 vi. Whether Defendants failed to properly include all forms of Incentive Pay when
27 calculating the respective regular rates for members of Overtime Class;

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vii. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 226.2, 1182.12, 1194, 1194.2 and 1197;

viii. Whether Defendants paid all wages/compensation due upon separation of employment to members of the Waiting Time Penalty Class pursuant to Labor Code §§ 201-203; and

ix. Whether Defendants furnished legally-compliant wage statements to Plaintiff and members of the Wage Statement Class pursuant to Labor Code § 226.

20. **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 meal and rest period policies/practices. As such, the 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.

21. **Typicality:** The claims of Plaintiff 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 Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages for missed or non-compliant meal and rest periods, did not receive all minimum wages for all hours worked, did not receive all premium pay for all overtime hours worked, was not provided with all wages/compensation due upon separation of employment with Defendants pursuant to Labor Code §§ 201-203, and did not receive accurate and complete wage statements.

22. **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

1 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
2 and-hour class actions in state and federal courts in the past and are committed to vigorously
3 prosecuting this action on behalf of the members of the Classes.

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

1 **FIRST CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
8 in accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
9 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
10 of the Meal Period Class at their respective regular rates of pay, in accordance with California
11 Labor Code §§ 204, 210, 226.7, and 512.

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

15 **SECOND CAUSE OF ACTION**

16 **REST PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 28. Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of
20 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
21 period worked, or major fraction thereof.

22 29. Due to Defendants' unlawful rest period policy and practices, Defendants did not
23 authorize and permit members of the Rest Period Class to take all rest periods to which they were
24 legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of
25 pay to Plaintiff and the Rest Period Class at their respective regular rates of pay for each violation,
26 in accordance with California Labor Code § 226.7.

27 30. The foregoing violations create an entitlement to recovery by Plaintiff and
28 members of 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 §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

33. 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 work in excess of eight (8) hours per work day and/or in excess of forty (40) hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. 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 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.

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FOURTH CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

36. 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.

37. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful practice of rounding the time entries of Plaintiff and other non-exempt employees to the nearest quarter-hour increment. This resulted in these individuals not being paid for all hours actually worked. Further, this unlawful conduct also includes Defendants' uniform piece-rate compensation structure, which resulted in Plaintiff and members of the Minimum Wage Class only being paid on Defendants' piece-rate system, as opposed to being paid for all hours worked. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

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

39. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but

1 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
2 entitled to recover economic and statutory damages and penalties and other appropriate relief as
3 a result of Defendants' violations of the California Labor Code and Wage Order 16.

4 40. Defendants' practice and uniform administration of corporate policy regarding
5 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
6 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
7 liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of
8 suit according to California Labor Code §§ 204, 558, 226.2, 1194 *et seq.*, 1197, 1198, and Code
9 of Civil Procedure § 1021.5.

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

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

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

20 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
22 at the time of their separation which includes, among other things, underpaid overtime and
23 minimum wages, and meal and rest period premium wages. Further, Plaintiff is informed and
24 believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants
25 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
26 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
27 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

6 **SIXTH CAUSE OF ACTION**

7 **UNPAID MINIMUM WAGE LINKED TO UNPAID OR UNDERPAID REST PERIODS**

8 **(AGAINST ALL DEFENDANTS)**

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

10 46. This cause of action is brought pursuant to Labor Code § 226.2, which effective
11 January 1, 2016, establishes compensation requirements for rest periods for piece-rate employees.
12 Specifically, Labor Code § 226.2(3)(A) requires piece rate employees be compensated for rest
13 periods at a regular hourly rate that is no less than the higher of: (i) An average hourly rate
14 determined by dividing the total compensation for the workweek, exclusive of compensation for
15 rest and recovery periods and any premium compensation for overtime, by the total hours worked
16 during the workweek, exclusive of rest and recovery periods; or (ii) The applicable minimum
17 wage.

18 47. At all relevant times herein, Defendants failed to conform their pay practices to
19 the requirements of the law. This unlawful conduct includes but is not limited to Defendants'
20 failure to pay Plaintiff and the Rest Period Class separately for rest periods, thereby causing
21 Plaintiff and the Rest Period Class to not be paid all required wages. Further, if Defendants
22 separately compensated Plaintiff and the Rest Period Class for rest periods, Defendants failed to
23 accurately calculate the rate at which Plaintiff and the Rest Period Class were entitled to be
24 compensated for such time pursuant to Labor Code § 226.2, thereby causing Plaintiff and the Rest
25 Period Class to be underpaid all required wages.

26 48. As a direct and proximate result of Defendants' unlawful conduct as alleged
27 herein, Plaintiff and the Rest Period Class have sustained economic damages, including but not
28 limited to unpaid or underpaid wages and lost interest, in an amount to be established at trial, and

1 they are entitled to recover economic and statutory damages and penalties and other appropriate
2 relief as a result of Defendants' violations of the California Labor Code.

3 **SEVENTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
9 and the Wage Statement Class with accurate and itemized wage statements that included, among
10 other requirements, all overtime and minimum wages as well as all meal and rest period premium
11 wages earned in violation of Labor Code § 226.

12 51. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
13 with accurate and itemized wage statements resulted in actual injury, as said failures led to, among
14 other things, the non-payment of all their overtime and minimum wages, as well as their meal and
15 rest period premium wages, and deprived them of the information necessary to identify the
16 discrepancies in Defendants' reported data.

17 52. Defendants' failures create an entitlement to recovery by Plaintiff and members of
18 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
19 Code §§ 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and
20 costs of suit according to Labor Code §§ 226 and 226.3.

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 54. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 *et seq.* by, amongst other things: failing to provide Plaintiff and members of the Meal Period and
28 Rest Period Classes all required meal and rest periods or pay premium payments for non-

compliant meal and rest periods in violation of Labor Code §§ 226.7, 512 and 516; failing to pay Plaintiff and the members of the Overtime Class and Minimum Wage Classes all overtime and minimum wages for all hours worked in violation of Labor Code §§ 204, 510, 558, 1182.12, 1194, 1194.2 and 1198; failing to pay Plaintiff and members of the Waiting Time Class all earned wages at the time of their separation in violation of Labor Code §§ 201-203; and failing to issue accurate and complete wage statements to Plaintiff and members of the Wage Statement Class in violation of Labor Code § 226.

55. 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.

56. 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.

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

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' former and 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)

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

60. 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.* (“PAGA”), acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the 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 of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff, 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 pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, 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 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;

- e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages to Plaintiff, the Waiting Time Penalty Class, and other aggrieved employee in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174; and
- i. Failing to separately pay, or underpaying, Plaintiff and other aggrieved employees all wages due for rest periods in violation of Labor Code § 226.2.

61. On February 19, 2020, 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 56 (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.

62. 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).

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1 **PRAYER**

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

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 9 5. Upon the Second Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 11 6. Upon the Third Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 13 7. Upon the Fourth Cause of Action, for payment of minimum wages, liquidated
14 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and
15 1197;
- 16 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
17 Labor Code §§ 201-203;
- 18 9. Upon the Sixth Cause of Action, for payment of wages, liquidated damages, and
19 penalties according to proof pursuant to Labor Code § 226.2;
- 20 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
21 § 226;
- 22 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
23 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
24 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
25 *seq.*;
- 26 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
28 558 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 56 (a)-(h);

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, and 2699(g), and Code of Civil Procedure § 1021.5; and

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

Dated: May 15, 2020

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: May 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

1
2
3 **PROOF OF SERVICE**

4 *Jose Jimenez v. Fenceworks, Inc.*

5 Orange County Superior Court Case No. 30-2018-01034150-CU-OE-CXC

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF LOS ANGELES)

9 I am employed in the County of Los Angeles, State of California. I am over the age of
10 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite
11 180, El Segundo, California 90245.

12 On October 16, 2020, I served the foregoing document(s) described as:

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

14 on the interested party(ies) in this action as follows:

15 Boris Sorsher, Esq.
16 Email: bsorsher@fisherphillips.com
17 Bret Martin, Esq.
18 Email: bmartin@fisherphillips.com
19 FISHER & PHILLIPS LLP
20 2050 Main Street, Suite 1000
21 Irvine, CA 92614
22 Attorneys for Defendant FENCEWORKS, INC.

23 [X] (VIA ELECTRONIC MAIL) Pursuant to Emergency Rule # 12 of the California Rules of
24 Court, I caused the document described above to be sent to the persons at the electronic service
25 addresses listed above via third party cloud service One Legal.

26 [X] (STATE) I declare under penalty of perjury under the laws of the State of California that
27 the above is true and correct.

28 Executed on October 16, 2020, at El Segundo, California.



Aaron Clark