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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11
12 **FOR THE COUNTY OF SAN DIEGO**

13 ANTHONY BROUSSARD, as an individual
14 and on behalf of all others similarly situated,
15 Plaintiff,

16 vs.

17 CHILDREN OF THE RAINBOW, INC., a
18 California Corporation; and DOES 1 through
19 100,
20 Defendants.

CASE NO. 37-2023-00006660-CU-OE-CTL

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

- 21 (1) **MINIMUM WAGE VIOLATIONS**
22 **(LABOR CODE §§ 1182.12, 1194,**
23 **1194.2, 1197);**
- 24 (2) **FAILURE TO PAY ALL OVERTIME**
25 **WAGES (LABOR CODE §§ 204, 510,**
26 **558, 1194, 1198);**
- 27 (3) **MEAL PERIOD VIOLATIONS**
28 **(LABOR CODE §§ 226.7, 512, 558);**
- (4) **FAILURE TO REIMBURSE**
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);
- (5) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226 et seq.);
- (6) **WAITING TIME PENALTIES**
(LABOR CODE § 201-203);
- (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 Anthony Broussard (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“Complaint”) against Children of the Rainbow, Inc., a California corporation; and Does 1 through 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages, penalties, and unreimbursed expenses under California Labor Code §§201-204, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, and California Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 5 (“Wage Order 5”) in addition to seeking declaratory relief, injunctive relief, and restitution. This 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 Defendants’ principal place of business is located in the County of San Diego. Defendants own, maintain offices, transact business, have an agent or agents within the County of San Diego, and/or otherwise are found within the County of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of process.

THE PARTIES

3. Plaintiff is an individual the over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident, residing in the County of San Diego. During the four years immediately preceding the filing of the Complaint in this action, and within

1 the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
2 employed by Defendants as a non-exempt employee in San Diego County. Plaintiff was, and is,
3 a victim of Defendants' policies and/or practices complained of herein, lost money and/or
4 property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
5 204, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698
6 *et seq.*, California Business and Professions Code § 17200 *et. seq.*, and Wage Order 5 which sets
7 employment standards for professional, technical, clerical, mechanical and similar occupations,
8 which includes teachers and their assistants.

9 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
10 years preceding the filing of this action and continuing to the present, Defendants did (and
11 continue to do) business within the County of San Diego by operating an educational child care
12 facility, and employed Plaintiff and other, similarly situated non-exempt employees within San
13 Diego County and the State of California and, therefore, were (and are) doing business in San
14 Diego County and the State of California.

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

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

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

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

13 **GENERAL FACTUAL ALLEGATIONS**

14 9. Defendants are a private childcare facility specializing in pre-school education
15 across the San Diego area. Plaintiff has been employed by Defendants as a non-exempt “Teacher”
16 since approximately September 2016. Plaintiff and Defendants briefly separated their
17 employment relationship during the pandemic when Defendants laid Plaintiff off on April 1,
18 2020, before ultimately re-hiring Plaintiff in May 2021. Plaintiff’s job duties include instructing,
19 supervising, and otherwise managing children in his care. Unless otherwise stated, all allegations
20 contained herein occurred during Plaintiff’s employment with Defendants.

21 10. During Plaintiff’s employment with Defendants, Defendants utilized a
22 timekeeping system, which upon information and belief, resulted in Plaintiff not being
23 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
24 Specifically, Plaintiff and other non-exempt employees clocked in and out for work each day
25 using Defendants’ timekeeping system which recorded the time to the minute. However, for
26 payroll purposes, Defendant rounded these timekeeping entries to quarter-hour increments in a
27 non-neutral manner resulting in Plaintiff and non-exempt employees not being paid all minimum
28 and overtime wages owed to them. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th

638, 654 (“[I]f an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for “all the time” worked.”) Additionally, Plaintiff was not compensated for all hours worked, such as hours that he spent undergoing training on the behalf of Defendants.

11. Defendants failed to provide Plaintiff and other non-exempt employees with all required 30-minute meal periods commencing before the end of the fifth hour of work. Specifically, on information and belief, Defendants implemented and enforced illegal meal policies/practices as Defendants did not allow non-exempt employees to take their meal periods until at least 5 and half hours after the commencement of their shifts. As a result of Defendants’ policies/practices, Defendants failed to provide Plaintiff and other non-exempt employees timely duty-free meal periods. Defendants also failed to provide Plaintiff and other non-exempt employees with an additional hour of premium pay for each instance in which a violation occurred and/or did not pay such premium at the correct rate of pay, as required by Labor Code § 226.7.

12. Defendants required Plaintiff and other non-exempt employees to provide various toys and other learning tool for their students. Despite requiring employees to incur these necessary business expenses, Defendants failed to compensate Plaintiff and other non-exempt employees for a reasonable portion these expenses.

13. As a result of Defendants’ failure to pay all minimum and overtime wages as well as meal premium wages owed, Defendants maintained inaccurate payroll records, failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their separations of employment, and issued inaccurate wage statements.

CLASS ACTION ALLEGATIONS

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

- a. The Minimum Wage Class consist of all Defendants’ current and former non-exempt employees in California who were subject to Defendants’ timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

- b. The Overtime Class consists of all of 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 were subject to Defendants' timekeeping policies/practices.
- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes commencing prior to the end of the fifth hour of work.
- d. The Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who were required to purchase leaning instruments for their students during the four years immediately preceding the filing of this action through the present.
- e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.
- f. The Waiting Time Class consists of all formerly employed members of the Minimum Wage Class, Overtime Class, and/or Meal Period Class, who separated their employment from Defendants during the three years immediately preceding the filing of this action through the present.

15. **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 is unknown to Plaintiff at this time; however, it is estimated that the Classes numbers greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

16. **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 situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Minimum Wage and Overtime Classes for all hours actually worked;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class;
- iii. Whether Defendants provided meal period premium payments for non-compliant meal periods;
- iv. Whether Defendants failed to reimburse members of the Expense Reimbursement Class for all necessary business expenses;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class; and
- vi. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful.

17. **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 timekeeping policies/practices, meal period policies/practices, and expense reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

18. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff, like the members of the Classes, was employed by Defendants in California during the applicable statute of limitations period and was deprived of all minimum wages owed, overtime wages owed, was not provided all legally required meal periods, was not reimbursed for all necessary business expenses, did not receive accurate, compliant wage statements, and was not paid all final wages owed at the time of separation of employment.

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

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

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

22. Wage Order 5, § 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.

23. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to compensate Plaintiff and members of the Minimum Wage Class 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 5.

24. 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.

25. 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 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 5.

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1 26. The foregoing practices and policies are unlawful and create an entitlement to
2 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
3 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
4 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
5 1194, 1197, and 1198, Wage Order 5, and Code of Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

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

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

14 29. At all times relevant herein, Defendants were required to properly compensate
15 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
16 hours worked pursuant to Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an
17 employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay"
18 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
19 workweek. Wage Order 5 § 3 also requires an employer to pay an employee double the
20 employee's regular rate of pay for work in excess of twelve hours each work day and/or for work
21 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
22 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
23 Overtime Pay Class at one and one-half times their regular rate of pay for such hours or double
24 their regular rate of pay for those hours worked in excess of 12 hours in a single workday.

25 30. The foregoing policies and practices alleged herein are unlawful and create
26 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
27 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
28

penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

32. 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 5, § 11. Despite Defendants' violations, Defendants did not in all instances pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

33. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 5, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

36. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any

1 employee or his personal representative of any right or remedy to which he is entitled under the
2 laws of this State.”

3 37. As a proximate result of Defendants’ policies and/or practices in violation of Labor
4 Code §§ 2802 and 2804, and Wage Order 5 § 9, Plaintiff and members of the Classes were
5 damaged in sums, which will be shown according to proof.

6 38. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit
7 pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any
8 action brought for the reimbursement of necessary expenditures carries interest at the same rate
9 as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the
10 date on which Plaintiff incurred the necessary expenditure.

11 **FIFTH CAUSE OF ACTION**
12 **WAGE STATEMENT VIOLATIONS**
13 **(AGAINST ALL DEFENDANTS)**

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

15 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
17 and other non-exempted employees with complete and accurate wage statements that included,
18 among other requirements, all overtime wages earned, gross wages earned, and net wages earned,
19 and the incorrect address for the legal entity that employed them in violation of Labor Code § 226
20 *et seq.*

21 41. Defendants’ failure to furnish Plaintiff with complete and accurate itemized wage
22 statements resulted in actual injury, as said failures led to, among other things, the non-payment
23 of all overtime owed, and deprived Plaintiff of the information necessary to identify the
24 discrepancies in Defendants’ reported data.

25 42. Defendants’ failures create an entitlement to recovery by Plaintiff and members of
26 the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*,
27 including statutory penalties, civil penalties, reasonable attorneys’ fees, and costs of suit
28 according to California Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

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

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

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Classes all final wages due to them at the time of their separation including, among other things, underpaid overtime, and meal period premiums. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

48. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing to provide Plaintiff and the Classes lawful meal periods; failing to reimburse Plaintiff and the Classes for all necessary business expenses; failing to furnish accurate and complete itemized

1 wage statements in violation of § 226 *et seq.*; and failing to pay all final wages at the time of
2 separation from employment.

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **(AGAINST ALL DEFENDANTS)**

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

23 54. Defendants have committed several Labor Code violations against Plaintiff,
24 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
25 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
26 employees, brings this representative action against Defendants to recover the civil penalties due
27 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
28 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited

1 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
2 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
3 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
4 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
5 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
6 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
7 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
8 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
9 subsequent violation per employee per pay period for those violations of the Labor Code for
10 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 11 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
12 wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194,
13 1194.2, and 1197;
- 14 b. Failing to pay Plaintiff and other aggrieved employees all overtime
15 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and
16 1198;
- 17 c. Failing to provide all meal periods as required by law and failing to pay meal
18 period premiums in all occasions and/or not paying the meal period premium
19 at the correct rate of pay to Plaintiff and other aggrieved employees at these
20 employees' respective regular rates of compensation for meal period violations
21 in violation of Labor Code §§ 226.7, 512, and 558;
- 22 d. Failing to reimburse Plaintiff and other aggrieved employees for all work-
23 related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- 24 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
25 compliant itemized wage statements in violation of Labor Code § 226;
- 26 f. Failing to timely pay all final wages due to Plaintiff and other aggrieved
27 employees in violation of Labor Code §§ 201, 202 and 203;
- 28

- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174.

55. On February 14, 2023, Plaintiff notified Defendants, via certified mail, and 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 violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

56. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former nonexempt employees who worked for Defendants in California at any time between February 14, 2022, and the present.

57. 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

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 §§ 558, 1182.12, 1194, 1194.2 and 1197;

1 5. Upon the Second Cause of Action for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

3 6. Upon the Third Cause of Action for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

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

7 8. Upon the Fifth Cause of Action for statutory wage statement penalties pursuant to
8 Labor Code § 226 *et seq.*;

9 9. Upon the Sixth Cause of Action for statutory waiting time penalties pursuant to
10 Labor Code §§ 201-203;

11 10. Upon the Seventh Cause of Action for restitution to Plaintiff and members of the
12 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of California Business and Professions Code
14 § 17200 *et seq.*;

15 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor
17 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
18 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
19 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
20 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
21 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
22 (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor
23 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
24 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
25 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
26 employee per pay period for those violations of the Labor Code for which no civil penalty is
27 specifically provided, based on the violations of Labor Code sections cited in Paragraph 54 (a)-
28 (h) above;

12. Prejudgment interest on all due and unpaid wages pursuant to California 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(c), and 2609 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

Dated: April 21, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By: Fletcher W. Schmidt
Fletcher W. Schmidt
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: April 21, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorney for Plaintiff