

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
tkorobkin@haineslawgroup.com
Daniel B. Marin-Finn (SBN 316728)
dmarin-finn@haineslawgroup.com
222 N. Sepulveda Blvd., Suite 1550
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JOSEPH SORCE, JR., as an individual, and on
behalf of all others similarly situated,

Plaintiff,

vs.

VICTORY CONSULTANTS, INC, a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2019-00047962-CU-OE-CTL

CLASS ACTION COMPLAINT:

- (1) **FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS (LABOR CODE § 226.7, 516, 558);**
- (5) **UNLAWFUL DEDUCTIONS FROM WAGES (LABOR CODE §§ 221-223)**
- (6) **WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);**
- (7) **WAITING TIME PENALTIES (LABOR CODE §§ 201-203)**
- (8) **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES (LABOR CODE § 2802);**
- (9) **UNFAIR COMPETITION (BUS. & PROF. CODE § 17200 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Joseph Sorce, Jr. ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this Class Action Complaint ("Complaint") against Defendant Victory
3 Consultants, Inc., and DOES 1 through 100, inclusive (collectively "Defendants"), and on
4 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 & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194 *et*
9 *seq.*, 1197, 1198, 2802 and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"),
10 in addition to seeking injunctive relief, declaratory relief, and restitution.

11 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
12 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits
13 of the Superior Court and will be established according to proof at trial.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
16 themselves to the California market so as to render the exercise of jurisdiction over them by the
17 California courts consistent with the traditional notions of fair play and substantial justice.

18 **VENUE**

19 4. Venue as to each Defendant is proper in this judicial district pursuant to California
20 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
21 complained of hereon occurred in the County of San Diego. Defendants own, maintain offices,
22 transact business, have agent(s) within the County of San Diego, and/or otherwise are found
23 within the County of San Diego, and Defendants are within the jurisdiction of this Court for
24 purposes of service of process.

25 **PARTIES**

26 5. Plaintiff is an individual over the age of eighteen (18) and is a former employee of
27 Defendants.. During the four years immediately preceding the filing of the Complaint, Plaintiff
28 was employed by Defendants in California as non-exempt employee (although, as set forth below,

1 he was misclassified by Defendants as an independent contractor). Plaintiff was and is a victim
2 of Defendants' policies and/or practices complained of herein, lost money and/or property, and
3 has been deprived of the rights guaranteed by California Business & Professions Code § 17200
4 *et seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194 *et seq.*, 1197,
5 1198, 2802 and Wage Order 4.

6 6. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of the Complaint and continuing to the present, Defendants,
8 headquartered in San Diego, California, did (and continue to do) business throughout the United
9 States, including in San Diego County and other counties throughout California, and employed
10 Plaintiff and other, similarly-situated non-exempt employees within, among other counties, San
11 Diego and the State of California and, therefore, were (and are) doing business in San Diego
12 County and the State of California. At all relevant times, Defendants were the "employer" of
13 Plaintiff within the meaning of all applicable state laws, statutes, and wage orders.

14 7. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
17 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
18 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
19 partner, or corporate, were responsible in some manner for the acts and omissions alleged herein,
20 and proximately caused Plaintiff and the Classes (as defined in Paragraph 27) to be subject to the
21 unlawful employment practices, wrongs, injuries, and damages complained of herein.

22 8. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

24 9. At all times mentioned herein, 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

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

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

GENERAL FACTUAL ALLEGATIONS

11. Defendants are a for-profit petition drive management firm. Defendants obtain signatures from registered voters on behalf of advocates for ballot initiatives with the intention that the signatures will qualify the ballot initiative for placement on the election ballot.

12. Defendants hire “circulators” or “signature gathers” to obtain signatures on behalf of ballot initiatives. Circulators are paid for each valid signature they collect. The rate of pay per signature varies by ballot initiative. Circulators obtain signatures from “signature sites,” locations where potential registered voters are likely to frequent.

13. Defendants employ “validators” who look over circulator signature sheets to ensure that each signature comes from a registered voter. Defendants will not pay a circulator if a signature comes from an unregistered voter. However, on information and belief, Defendants encourage validators to arbitrarily invalidate signatures in order to reduce the amount paid to circulators.

14. Defendants would typically pay Plaintiff, in the form of a check, two days after he submitted his signatures. However, Defendants would unlawfully deduct expenses (commonly referred to as “charge-backs”) from Plaintiff’s total payment, such as travel expenses (e.g., hotel and mileage). In addition, Plaintiff and other circulators were required to provide their own tables and chairs to set up at signature sites, which were required to hold all of the items that circulators needed in order to collect signatures.

15. Defendants provide circulators with petitions, clipboards, pens, and registered voter forms prior to their attending signature sites. Defendants instruct certain circulators to obtain

1 signatures from certain signature sites and precludes other circulators from obtaining signatures
2 from other signature sites.

3 16. Plaintiff is a former employee of Defendants, and worked for Defendants in
4 California as a circulator. At all relevant times, Defendants misclassified Plaintiff as an
5 independent contractor. Defendants knew, or reasonably should have known, that Plaintiff should
6 always have been classified as a non-exempt employee but Defendants voluntarily and knowingly
7 misclassified Plaintiff as an independent contractor.

8 17. Defendants misclassified Plaintiff and other circulators as independent
9 contractors. Circulators are (a) under the control and direction of Defendants in connection with
10 the performance of their work, (b) perform work that is part of the usual course of Defendants'
11 business, and/or (c) are not customarily engaged in an independently established trade,
12 occupation, or business in the same nature of the work performed by Defendants.
13 Notwithstanding that Plaintiff and other similarly situated individuals should have been classified
14 as non-exempt employees of Defendants, because they provide services that are within the usual
15 course of the hiring entity's business, Defendants willfully misclassified circulators as
16 independent contractors. *See Dynamex Operations West, Inc. v. The Superior Court of Los*
17 *Angeles County* (2018) 4 Cal.5th 903 ("Under this [ABC] test, a worker is properly considered
18 an independent contractor to whom a wage order does not apply only if the hiring entity
19 establishes: . . . (B) that the worker performs work that is outside the usual course of the hiring
20 entity's business . . .").

21 18. As described above, throughout his employment with Defendants, Plaintiff was
22 paid on a piece-rate basis, whereby he was paid a pre-determined amount per signature obtained.
23 Plaintiff and other circulators were compensated exclusively on a piece-rate basis. As a result,
24 Plaintiff and other circulators were not paid for all hours worked, including but not limited to
25 hours: traveling to and from signature sites, setting up table and chairs at signature sites
26 and breaking down the table and chairs before leaving signature sites.

27 19. As a result of the foregoing practices, Defendants failed to pay Plaintiff and other
28 circulators who were compensated on a piece-rate basis for so-called "non-productive" time (i.e.,

hours that they were working but were not actually performing piece-rate work). *See 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).

20. In addition to failing to pay for non-productive time, Defendants also failed to compensate Plaintiff and other circulators for all overtime wages in those instances in which they worked over 8 hours in a workday and/or 40 hours in a workweek. Nor did Defendants pay Plaintiff and other circulators double-time wages when they worked in excess of 12 hours in a workday. When taking into consideration the time that Plaintiff and other circulators would spend traveling to and from signature sites, setting up at signature sites, collecting signatures, and cleaning up and breaking down signature sites, Plaintiff and other circulators would often work overtime and double-time hours without being compensated for these hours worked.

21. As a result of the time spent working at signature sites, and traveling to and from signature sites, Plaintiff often worked more than eight hours in a day, but never received minimum or overtime wages owed because of Defendants' policies and practices only paid circulators for valid signatures. Defendants' policies and practices have resulted in the failure to properly compensate Plaintiff and other circulators for all hours worked, thereby depriving them of all required minimum and overtime wages earned.

22. As a further result of this unlawful misclassification scheme, Defendants failed to maintain any compliant meal period practices/policies. While working at signature sites, Plaintiff and other misclassified circulators were not given an option to record, and in fact did not record, meal or rest periods. In practice, Defendants often require their circulators to obtain signatures for the entire time they are at signature sites, and if any meal period is provided, it is often interrupted by work obligations, resulting in less than 30 minutes of off-duty time, and/or it is often late (after the start of the sixth hour of work). Nor did Defendants provide Plaintiff or other circulators with second meal periods on workdays when they worked over 10 hours. Nonetheless, in the event that legally compliant meal period(s) were not provided, Defendants never paid Plaintiff or any other circulators any meal period premiums as required by Labor Code § 226.7.

23. Defendants also failed to authorize and permit Plaintiff to take all required rest periods and failed to maintain any rest period practices/policies. Plaintiff and other circulators were not authorized or permitted to take paid rest periods while at signature sites, for the reasons described in the preceding paragraph. Furthermore, even assuming, *arguendo*, that a rest period was authorized, Defendants failed to compensate Plaintiff for any rest periods given that Defendants' piece-rate compensation system did not include any separate compensation for rest periods. *See Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 ("under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately compensated in a piece-rate system."). Despite Defendants' failure to authorize and permit Plaintiff and other circulators to take all required paid rest periods due to their uniform and unlawful practices, Defendants never provided Plaintiff with an hour of pay at his regular rate for each rest period violation as required by Labor Code § 226.7.

24. Defendants' policies have also failed to reimburse Plaintiff and other circulators for all necessary business expenses, including but not limited to mileage incurred traveling to and from signature sites, cell phone expenses in, *inter alia*, communicating with management, parking expenses at signature sites, and other travel expenses. As noted above, rather than indemnify Plaintiff and other circulators for these necessary expenses, Defendants would often deduct these expenses as "charge-backs" from circulators' pay checks.

25. Defendants have also failed to issue itemized wage statements to Plaintiff and other circulators. As stated, Defendants would pay Plaintiff and other circulators with checks but did not include wage statements with the checks.

26. As a result of Defendants' failure to pay all wages and failure to pay all required meal and rest period premium wages, Defendants failed to pay all final wages to Plaintiff and other formerly-employed circulators at the separation of their employment.

CLASS ACTION ALLEGATIONS

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

- 1 a. The Circulator Class consists of all of Defendants’ circulators, signature gatherers,
2 or individuals with similar job titles or job duties, who performed work for
3 Defendants in California, and who were classified by Defendants as independent
4 contractors, during the four years immediately preceding the filing of this lawsuit
5 through the present.
- 6 b. The Waiting Time Class consists of all members of the Circulator Class who no
7 longer perform work for Defendants and who last worked for Defendants in the
8 three years immediately preceding the filing of this lawsuit.
- 9 c. The Wage Statement Class consists of the members of the Circulator Class, who
10 performed work for Defendants during the one year immediately preceding the
11 filing of this lawsuit through the present.

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

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

- 21 i. Whether Defendants misclassified Plaintiff and other circulators as independent
22 contractors;
- 23 ii. Whether Defendants violated the applicable Labor Code provisions including, but
24 not limited to §§ 510 and 1194, by requiring overtime work and not paying for
25 said work according to the overtime laws of the State of California;
- 26 iii. Whether Defendants violated the applicable Labor Code provisions including, but
27 not limited to §§ 1194, 1194.2, and 1197 by not paying minimum wage for work
28 according to the minimum wage laws of the State of California;

- 1 iv. Whether Defendants’ meal period policy, or lack thereof, has deprived Class
2 members of all meal periods to which they have been entitled as a matter of law;
3 v. Whether Defendants’ rest period policy, or lack thereof, has deprived Class
4 members of all rest periods to which they have been entitled as a matter of law;
5 vi. Whether Defendants provided meal or rest period premium payments for non-
6 compliant meal and/or rest periods;
7 vii. Whether Defendants’ reimbursement policies/practices reimbursed Class
8 members for all necessary business expenditures;
9 viii. Whether Defendants issued accurate itemized wage statements to Wage Statement
10 Class members pursuant to Labor Code § 226.

11 30. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
14 and/or practices applicable to each individual class member, such as their failure to pay a
15 minimum wage, their failure to implement a lawful meal and/or rest period policy, and their
16 failure to provide reimbursement for mileage and/or other expenses incurred for work-related
17 purposes. As such, these common questions predominate over individual questions concerning
18 each individual class member’s showing as to their eligibility for recovery or as to the amount of
19 their damages.

20 31. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
21 Defendants employed Plaintiff in California as a circulator and misclassified him as an
22 independent contractor. As alleged herein, Plaintiff, like the members of the Classes, was
23 deprived of all overtime and minimum wages for all hours worked, was not provided with all
24 meal and rest periods, failed to receive premium pay for meal and rest period violations, was not
25 furnished with accurate itemized wage statements, did not receive all earned final wages, and did
26 not receive all reimbursements to which he was entitled for necessary business expenses incurred.

27 32. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
28 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,

Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the classes.

33. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee 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 Classes 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 class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

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FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

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

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

36. Plaintiff and members of the Circulator Class worked overtime hours for Defendants. At all times relevant herein, Defendants were required to properly compensate hourly non-exempt employees, including Plaintiff and members of the Circulator Class, for all overtime hours worked pursuant to California Labor Code § 1194 and IWC Wage Order No. 4-2001. Wage Order 4-2001, § 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 8 hours per work day and/or in excess of 40 hours of work in the workweek. Labor Code § 510 and Wage Order 4, Section 3 also requires an employer to pay an employee double the employee’s regular rate of work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Circulator class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Circulator Class at one and one-half their regular rate of pay for such hours. Defendants also caused Plaintiff and the members of the Circulator Class to work in excess of 12 hours in a workday but did not properly compensate Plaintiff and the members of the Circulator Class at double their regular rate of pay for such hours.

37. Defendants’ policy and practice of requiring overtime work and not paying for all overtime hours worked violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198, and IWC Wage Order No. 4.

38. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Circulator Class in a civil action for the unpaid amount

1 of overtime premiums owing, including interests thereon, statutory penalties, civil penalties,
2 attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
3 1194, 1198, and Code of Civil Procedure § 1021.5.

4 **SECOND CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 40. Wage Order 4-2001, § 4 and California Labor Code §§ 1197 and 1182.12 establish
9 the right of employees to be paid minimum wages for all hours worked, in amounts set by state
10 law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the
11 legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together
12 with attorney's fees and costs of suit, as well as liquidated damages in an amount equal to the
13 unpaid wages and interests accrued thereon.

14 41. Defendants' policy and practice of not paying all minimum wages violates
15 California Labor Code §§ 204, 210, 216, 558, 1182.12, 1197.1, 1198, and Wage Order 4.

16 42. Such a practice and uniform administration of corporate policy regarding illegal
17 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
18 members of the Circulator Class in a civil action for the unpaid amount of minimum wages,
19 liquidated damages, including interests thereon, statutory penalties, civil penalties, attorneys'
20 fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 558, 1194, 1198, and
21 Code of Civil Procedure § 1021.5.

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 44. Defendants failed in their affirmative obligation to provide all of their non-exempt
27 employees in California, including Plaintiff and members of the Circulator Class, with proper
28 meal periods in accordance with the mandates of the California Labor Code and IWC Wage Order

1 4-2001. As such, Defendants owe these employees premium pay at the employees' respective
2 regular rates of pay for meal period violations pursuant to Labor Code §§ 226.7, 512, and 558,
3 and IWC Wage Order No. 4-2001.

4 45. Despite Defendants' violations, and contrary to California Labor Code §§ 204,
5 210, 226.7, and 512, Defendants did not pay an additional hour of pay to Plaintiff and the members
6 of the Circulator Class members at their respective regular rates of pay for the meal periods that
7 were not lawfully provided.

8 46. The foregoing policies and practices are unlawful and create an entitlement to
9 recovery by Plaintiff and members of the Circulator Class in a civil action for the unpaid amount
10 of meal period premiums owing, including interests thereon, statutory penalties, civil penalties,
11 attorneys' fees, and costs of suit according to California Labor Code §§ 226.7, 512, 516, 558, and
12 Civil Code §§ 3287(b) and 3289.

13 **FOURTH CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

17 48. Wage Order 4-2001, § 12 and California Labor Code §§ 226.7, 516 and 558
18 establish the right of employees to be provided with a rest period of at least ten (10) minutes for
19 each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to
20 authorize and permit Plaintiff and members of the Circulator Class to take all legally complaint
21 rest periods, Defendants did not pay these individuals an additional hour of pay at their respective
22 regular rate for the rest periods that they failed to authorize and permit them to take, as required
23 by Labor Code § 226.7.

24 49. Defendants' policies and practices described herein are unlawful and create an
25 entitlement to recovery by Plaintiff and members of the Circulator Class in a civil action for the
26 unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
27 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
28 516, 558, and Civil Code §§ 3287(b) and 3289.

1 **FIFTH CAUSE OF ACTION**

2 **UNLAWFUL DEDUCTIONS FROM WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 50. Plaintiffs re-alleges and incorporates by reference all previous paragraphs.

5 51. As alleged above, Defendants made unlawful deductions from Plaintiff's earned
6 wages in the form of "charge-backs" for business expenses, as well as by invalidating signatures
7 that should not have been invalidated. As a result, Defendants failed to pay all wages owed to
8 Plaintiff and members of the Circulator Class, in violation of Labor Code §§ 221-223, which
9 prohibit, among other things, deductions from earned wages except in certain enumerated
10 circumstances not applicable here.

11 52. Defendants' failure to pay all earned wages is unlawful and creates an entitlement
12 to recovery by Plaintiff and the members of the Circulator Class for unpaid wages, interest on
13 said wages, and attorneys' fees pursuant to Labor Code §§ 218.5 and 218.6, and Code of Civil
14 Procedure § 1021.5.

15 **SIXTH CAUSE OF ACTION**

16 **WAGE STATEMENT VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 54. Plaintiff is informed and believes, and based thereon allege that, Defendants
20 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
21 and members of the Wage Statement Class with accurate and complete wage statements with
22 respect to, *inter alia*, their actual hours worked, total gross wages earned, all rates of pay, and
23 total net wages earned, in violation of Labor Code § 226 *et seq.*

24 55. Defendants' failures in furnishing Plaintiff and members of the Wage Statement
25 Class with complete and accurate itemized wage statements resulted in actual injury, as said
26 failures led to, among other things, the non-payment of all their overtime and minimum wages,
27 meal period premiums, rest period premium wages, and deprived them of the information
28 necessary to identify the discrepancies in Defendants' reported data.

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

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 64. 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 his
8 or her obedience to the directions of the employer.”

9 65. 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 66. As a proximate result of Defendants’ policies and/or practices in violation of Labor
15 Code §§ 2802 and 2804, and Wage Order 4, § 9, Plaintiff and members of the Circulator Class
16 were damaged in sums, which will be shown according to proof.

17 67. Plaintiff and members of the Circulator Class are entitled to attorneys’ fees and
18 costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

19 68. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
20 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
21 Plaintiff and members of the Circulator Class are entitled to interest, which shall accrue from the
22 date on which they incurred the necessary expenditures.

23 **NINTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(AGAINST ALL DEFENDANTS)**

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

27 70. Defendants have engaged and continue to engage in unfair and/or unlawful
28 business practices in California in violation of California Business and Professions Code § 17200

1 *et seq.*, by: (a) misclassifying Plaintiff and members of the Circulator Class as independent
2 contractors; (b) failing to pay Plaintiff and members of the Circulator Class all overtime wages;
3 (c) failing to pay Plaintiff and members of the Circulator Class all minimum wages; (d) failing to
4 provide Plaintiff and members of the Circulator Class with all meal periods to which they are
5 entitled, or failing to pay them meal period premium payments in lieu thereof; (e) failing to
6 authorize and permit all required duty-free rest periods to Plaintiff and members of the Circulator
7 Class, and/or failing to pay them rest period premiums payments in lieu thereof; (f) knowingly
8 failing to furnish Plaintiff and members of the Wage Statement Class with accurate and complete
9 wage statements in violation of Labor Code § 226; (g) failing to pay Plaintiff and members of the
10 Waiting Time Class all final wages at termination; and (h) failing to reimburse all necessary
11 business expenditures to Plaintiff and members of the Circulator Class.

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

17 72. Because Plaintiff was and is a victim of Defendants' unfair and/or unlawful
18 conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks
19 full restitution of monies, as necessary and according to proof, to restore any and all monies
20 withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code
21 §§ 17203 and 17208.

22 73. The acts complained of herein occurred within the last four years immediately
23 preceding the filing of this lawsuit.

24 74. Plaintiff was compelled to retain the services of counsel to file this court action to
25 protect his interests and those of the Classes, to obtain restitution, to secure injunctive relief on
26 behalf of himself and Defendants' other circulators, and to enforce important rights affecting the
27 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
28 which he is entitled to recover under Code of Civil Procedure § 1021.5.

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, 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 §§ 204, 510, 558, 1194, and 1198;
- 9 5. Upon the Second Cause of Action, for payments of minimum wages, liquidated
10 damages, and penalties according to proof pursuant to Labor Code §§ 558, 1182.12, 1194, 1194.2
11 and 1199;
- 12 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
13 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 14 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
15 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 16 8. Upon the Fifth Cause of Action, for recovery of unlawfully deducted wages under
17 Labor Code §§221-223;
- 18 9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant
19 to Labor Code § 226;
- 20 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
21 to Labor Code § 203;
- 22 11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and
23 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 24 12. Upon the Ninth Cause of Action, for injunctive relief and restitution to Plaintiff
25 and members of the Classes of all money and/or property unlawfully acquired by Defendants by
26 means of any acts or practices declared by this Court to be in violation of Business and Professions
27 Code § 17200 *et seq.*;

28 ///

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

3 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
4 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and Code of Civil Procedure § 1021.5; and

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

6
7 Dated: September 11, 2019 Respectfully submitted,
 HAINES LAW GROUP, APC

8
9 By: _____

Paul K. Haines
Attorneys for Plaintiff

10
11 **DEMAND FOR JURY TRIAL**

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

13
14 Dated: September 11, 2019 Respectfully submitted,
 HAINES LAW GROUP, APC

15 By: _____

Paul K. Haines
Attorneys for Plaintiff