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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

Michael Franchini, as an individual and
on behalf of all employees similarly
situated,

Plaintiff,

v.

General Consolidated Constructors, Inc.,
a California Corporation: and DOES 1
through 50, inclusive,

Defendants.

Case No.: **RIC2001600**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Labor Code §§ 226.7, IWC Wage Order 16 (Rest Period Violations);
4. Violation of Labor Code § 226 (Failure to Provide Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
6. Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practice); and
8. Violation of Labor Code § 2698 et seq., the Private Attorneys General Act ("PAGA").

REQUEST FOR JURY TRIAL

1 Plaintiff Michael Franchini (“Plaintiff” or “Mr. Franchini”), on behalf of himself and all
2 employees similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein (“Putative Class”) by
6 Defendants General Consolidated Constructors, Inc., (collectively “Defendant”). The term
7 “RELEVANT TIME PERIOD” or “TIME PERIOD” is defined as four (4) years prior to the
8 filing of the Complaint. Plaintiff reserves the right to amend this Complaint to reflect a different
9 “Time Period” as further discovery is conducted.

10 2. Plaintiff, individually and on behalf of the Putative Class, seeks relief against
11 Defendants for their: (1) failure to pay all wages due including regular and overtime wages and
12 minimum wages; (2) failure to provide meal periods or premium compensation in lieu thereof;
13 (3) failure to provide rest periods or premium compensation in lieu thereof; (4) failure to provide
14 accurate itemized wage statements; (5) failure to pay wages due upon termination of
15 employment; (6) failure to indemnify for expenditures or losses in discharge of duties; and (7)
16 unfair business practices under Business and Professions Code section 17200, et seq.

17 3. Additionally, Plaintiff seeks penalties in connection with Defendants’ Labor Code
18 violations based on the Private Attorneys’ General Act (“PAGA”), Labor Code section 2698, et
19 seq.

20 4. At all relevant times herein, Defendants has consistently maintained and enforced
21 the following unlawful policies and practices against Plaintiff and the Putative Class:

22 (a) Willfully refusing to pay all hours worked, including both regular, overtime,
23 and minimum wages;

24 (b) Willfully refusing to pay separate compensation for non-productive time
25 worked;

26 (c) Willfully refusing to permit off-duty meal periods or providing compensation
27 in lieu thereof;
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- 1 (d) Willfully refusing to permit rest periods or providing compensation in lieu
2 thereof;
- 3 (e) Willfully refusing to furnish accurate itemized wage statements upon payment
4 of wages;
- 5 (f) Willfully refusing to pay all wages due upon separation of employment;
- 6 (g) Willfully refusing to pay for expenditures or losses in the discharge of their
7 duties; and
- 8 (h) Willfully engaging in unfair business practices.

9 **JURISDICTION AND VENUE**

10 5. This Court has subject matter jurisdiction over the causes of action alleged in this
11 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
12 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
13 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
14 collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00).

15 6. Defendants are California corporations believed to be doing business in the State
16 of California.

17 7. Defendants General Consolidated Constructors, Inc. are California Corporations
18 with headquarters offices located at 19800 Gustin Ln. Perris, CA. 92570. There is no federal
19 question at issue, as the issue herein are based solely on California statutes and law, including
20 the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, Code of Civil
21 Procedure, Business and Professions Code and Rules of Court. By doing business in the state of
22 California, Defendants have purposefully availed themselves of the state's jurisdiction.
23 Accordingly, as personal jurisdiction over Defendants would be constitutional, California's
24 long-arm statute provides that California courts may exercise personal jurisdiction over
25 Defendants. (Code Civ. Pro. § 410.10.)

26 8. Venue is proper in the County of Riverside, because Defendants perform business
27 in the County of Riverside, and the acts set forth herein occurred in the County of Riverside
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THE PARTIES

Plaintiff

9. Plaintiff, at all relevant times herein, was an employee of Defendants from on or about August 26, 2016 until August 9, 2019 as a carpenter.

10. Plaintiff is entitled to compensation for all hours worked, overtime compensation, premium pay, reporting time pay, business expense reimbursements, and penalties from Defendants. Plaintiff worked for Defendants for at least four (4) years prior to the commencement of this action, working at various job sites throughout California assigned to him by Defendants.

Defendants

11. Plaintiff is informed and believes, and based thereon alleges, that General Consolidated Constructors, Inc. is a California Corporation, headquartered in California, and doing business in the state of California, and was the employer of the Plaintiff and similarly aggrieved employees during the Relevant Time Period. Defendant General Consolidated Constructors, Inc. has facilities in California, including in Riverside County. Defendant is in the construction business throughout California.

12. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendant when ascertained.

13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or single business enterprise, integrated enterprise and/or are agents of one another, are alter egos, joint employers and conspire with one another to increase profits by engaging in the conduct described in this complaint.

1 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
2 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
3 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
4 below was acting, at least in part, within the course and scope of that authority as such agent,
5 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
6 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
7 are legally attributable to the other Defendants.

8 **PAGA ADMINISTRATIVE PREREQUISITE**

9 15. Plaintiff brings this case in part as a representative action seeking penalties for the
10 State of California in a representative capacity, as provided by the Private Attorneys General Act
11 (hereinafter “PAGA”) Labor Code section 2698 et seq., to the extent permitted by law, as an
12 aggrieved employee who was employed by Defendants and did not receive all wages due, was
13 not provided lawful meal and rest breaks due to the Defendants’ policies and practices, did not
14 receive all wages due at the termination of employment, and who was forced to incur necessary
15 business expenses for which Defendants failed to reimburse.

16 16. Prior to filing this Complaint, on January 22, 2020, Plaintiff gave written notice
17 by certified mail to the Labor and Workforce Development Agency (hereinafter “LWDA”) and
18 to Defendants of the specified provisions alleged to have been violated, including the facts and
19 theories that support the alleged violation as required by Labor Code section 2699.3. (LWDA
20 Case No. LWDA-CM-768150-20.)

21 17. The LWDA has not provided Plaintiff with any notice that it intends to investigate
22 the violations as alleged in Plaintiff’s LWDA notice and more than 65 calendar days have elapsed
23 since the postmark date of that notice.

24 **FACTUAL ALLEGATIONS**

25 18. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny their
26 employees the benefits due under California’s wage and hour laws for work performed in
27 California. Defendants wrongfully refused to pay Plaintiff and the Putative Class minimum
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1 wages, overtime compensation, reporting time pay, business expense reimbursements, and other
2 statutory benefits mandated by California.

3 19. Defendants has been in the contraction of office buildings, installation of industrial
4 and manufacturing system and processing plants. Defendant is a multi-service construction
5 service company and also provides consulting, planning and project management throughout
6 California.

7 20. Plaintiff and Aggrieved Employees frequently worked over eight (8) hours per day
8 and/or over forty (40) hours each week. However, Defendants failed to compensate them the
9 required minimum wage and overtime compensation in violation of the Labor Code and the IWC
10 Wage Orders.

11 21. Plaintiff and Putative Class were compensated at approximately \$31 dollars per
12 hour. Plaintiff and Aggrieved Employees were subject to unlawful rounding policy for their
13 compensable work time and unlawful deductions from their pay.

14 22. Defendants failed to provide an accurate itemized wage statement in writing to
15 Plaintiff and Putative Class.

16 23. Furthermore, Defendants failed to provide Plaintiff and the Putative Class with
17 meal periods in violation of the Labor Code and Industrial Welfare Commission ("IWC") Wage
18 Orders. Plaintiff and the Putative Class were entitled to timely, uninterrupted, thirty (30) minute
19 meal periods prior to the end of each five (5) hours worked, but often did not receive these.

20 24. Defendant also failed to permit complaint rest periods. Specifically, Plaintiff and
21 the Putative Class could not take any duty-free breaks lasting ten (10) minutes in violation of the
22 Labor Code and the IWC Wage Orders.

23 25. Defendant further failed to reimburse Plaintiff and the Putative Class for any
24 necessary business expenses. Specifically, Plaintiff and the Putative Class were required to use
25 their personal vehicles to drive to different worksites located in Riverside and Los Angeles
26 County. Defendant also failed to reimburse Plaintiff and Putative Class for a reasonable portion
27 of expenses related to the use of personal cellular phones for business purposes in violation of
28 the Labor Code and the IWC Wage Orders.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and all other similarly situated persons, as a class action pursuant to Code of Civil Procedure section 382. The Putative Class consists of all individuals who worked for Defendants in California location during the Relevant Time Period who were California Citizens at the time of the filing of this complaint. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend or modify the Putative Class description, or to further divide the Putative Class into subclasses by limitation to particular issues or by other means.

27. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation, and because the Putative Class is easily ascertained by Defendants' personnel and payroll records.

Numerosity

28. The potential members of the class as defined are so numerous that joinder of all class members is impracticable. While the precise number of the Plaintiff Class is unknown, Plaintiff is informed and believes that Defendant has employed more than 50 employees at any given time during the Class Period, and that the Putative Class may contain as many as 100 employees total.

Commonality

29. There are common questions of law and fact arising out of Defendants' conduct as described herein, including, but not limited to:

- a. Whether Defendants failed to pay all wages, including minimum and overtime wages, due to Plaintiff and the Putative Class;
- b. Whether Defendants failed, and continue to fail, to provide meal periods or premium compensation in lieu thereof to Plaintiff and the Putative Class;
- c. Whether Defendants failed, and continue to fail, to authorize and permit Plaintiff and the Putative Class to take rest breaks, or pay premium compensation in lieu thereof;

- 1 d. Whether Defendants failed to furnish wage statements to Plaintiff and the
2 Putative Class containing all information required by Labor Code section
3 226(a);
- 4 e. Whether Defendants failed to pay all unpaid wages earned during the course
5 of employment to Plaintiff and the Putative Class upon the separation of their
6 employment;
- 7 f. Whether Defendants failed to reimburse Plaintiff and the Putative Class for all
8 necessary business expenditures, including but not limited to the use of their
9 personal vehicles; and
- 10 g. Whether Defendants engaged in unlawful or unfair business practices.

11 **Typicality**

12 30. Plaintiff's claims are typical of the Putative Class's claims, all of whom have
13 incurred and/or will incur damages, as a result of Defendants' common course of conduct and
14 common policies and practices. The claims of Plaintiff are typical because of Defendants
15 subjected all of its non-exempt employees to identical violations of the California IWC Wage
16 Orders, California Code of Regulations, California Labor Code, and California Business and
17 Professions Code, among other statutes.

18 **Adequacy of Representation**

19 31. Plaintiff will fairly and adequately represent and protect the interests of the
20 Putative Class. Plaintiff's interests are not in conflict with those of the Putative Class. Plaintiff's
21 attorneys are competent, well-versed, and experienced in litigating employment class actions and
22 other complex litigation matters.

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24 **Superiority of Class Action**

25 32. Under the facts and circumstances set forth above, a class action is superior to any
26 other method available for both the fair and efficient adjudication of the rights of each class
27 members inasmuch as joinder of individual relatively small claims of Putative Class members is
28 not practical, and if each employee were required to file an individual lawsuit, the corporate

Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Putative Class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees fearful of retaliation and permanent damage to their careers at present and/or subsequent employment. Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein further support class certification.

FIRST CAUSE OF ACTION

Failure to Pay All Wages Owed, Including Minimum Wage and Overtime (Plaintiff Against All Defendants)

33. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

34. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum wage for all industries shall not be less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall not be less than ten (\$10) per hour. For employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January 1, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11) per hour. As of January 1, 2019 through December 31, 2019, the minimum wage rate in California is twelve dollars (\$12) per hour. Plaintiff is informed and believes Defendants employ more than 26 employees and thus fall within all requirements of section 1182.12.

35. Additionally, many California cities and counties impose a separate minimum wage higher than that set by section 1182.12, which members of the Putative Class may fall under.

36. Notwithstanding any other provision of the Labor Code, hourly minimum wage rates are set for all industries according to statute. (Lab. Code § 1182.12). Employers must pay employees no less than minimum wage for each hour worked. (Lab. Code, § 1194; IWC Wage Order 16-2001, Sect. 4.)

1 37. Any work in excess of eight hours in any workday and any work in excess of 40
2 hours in a workweek shall be compensated at a rate of no less than one and one-half times the
3 regular rate of pay for an employee. (Lab. Code, § 510, subd. (a); IWC Wage Order 16-2001,
4 Sect. 3(A)). Any work in excess of 12 hours in a workday shall be compensated at the rate of
5 twice the regular rate of pay for an employee. (*Ibid.*)

6 38. Any employee receiving less than the legal minimum wage or legal overtime
7 compensation is entitled to recover in a civil action the amount of unpaid wages and interests
8 thereon, attorneys' fees, and costs of suit. (Lab. Code, § 1194, subd. (a)).

9 39. Each workday an employee is required to report for work and does report, but is
10 not put to work or furnished less than half said employee's usual or scheduled day's work, the
11 employee shall be paid for half the usual or scheduled day's work, but in no event for less than
12 two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall
13 not be less than the minimum wage. (IWC Wage Order 16-2001, Sect. 3 and 4.)

14 40. All wages earned in employment are due and payable twice during each calendar
15 month on dates designated in advance by the employer. (Lab. Code, § 204).

16 41. Plaintiff and the Putative Class regularly worked over eight (8) hours per day and
17 forty (40) hours per week. Defendants failed to pay Plaintiff and the Putative Class all minimum
18 wage, overtime premiums, and/or double-time premiums for all hours worked in excess of eight
19 (8) hours per day and/or forty (40) hours per week for work performed for Defendants. Pursuant
20 to Labor Code sections 510, 1182.12, 1194, and section 3 of IWC Wage Order 16-2001, Plaintiff
21 and the Putative Class seek the payment of all minimum wage, overtime, and/or double-time
22 compensation, and reporting time pay earned and accrued beginning four (4) years prior to filing
23 this complaint, according to proof.

24 42. Additionally, Plaintiff and the Putative Class are entitled to liquidated damages,
25 attorneys' fees, and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194,
26 and prejudgment interest.

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1 and/or other statutes.

2 50. Pursuant to Code of Civil Procedure section 1021.5 and any other applicable
3 provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred
4 in this action.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof**

7 **(Plaintiff against All Defendants)**

8 51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
9 fully set forth herein.

10 52. Labor Code section 226.7 provides that employers authorize and permit all
11 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours,
12 or major fraction thereof.

13 53. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
14 provide and employee rest periods in accordance with this section, the employer shall pay the
15 employee one (1) hour of pay at the employees' regular rate of compensation for each workday
16 that the rest period is not provided. Plaintiff and the Putative Class consistently worked over
17 four (4) hours per shift with no rest breaks, due to Defendants' uniform policies and practices.

18 54. Defendants failed to reasonably make available rest breaks to Plaintiff and the
19 Putative Class during the Relevant Time Period.

20 55. Plaintiff and the Putative Class are entitled to damages in an amount equal to one
21 (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil
22 Procedure section 1021.5 and any other applicable provision of law, Plaintiff requests the court
23 award reasonable attorneys' fees and costs incurred in this action.

24 **FOURTH CAUSE OF ACTION**

25 **Failure to Provide Itemized Wage Statements and Maintain Records**

26 **(Plaintiff against All Defendants)**

27 56. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
28 fully set forth herein.

1 57. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage
2 Orders, provide that employers must keep records and provide employees with itemized wage
3 statements showing all hours worked and each applicable rate of pay in effect during the pay
4 period with the corresponding number of hours worked at each hourly rate.

5 58. Labor Code section 1174, subdivision (d), requires employers to keep at a central
6 location in California or at the plant or establishment at which the employees are employed,
7 payroll records showing the hours worked daily, and the wages paid to, each employee. Labor
8 Code section 226, subdivision (a), requires employers to provide employees – either as a
9 detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
10 wages are paid by personal check or cash – an accurate itemized wage statement in writing
11 including specified information, including but not limited to: (1) gross wages earned; (2) total
12 hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4) all
13 deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
14 paid; (7) the name of the employee and only the last four digits of his or her social security number
15 or an employee identification number other than a social security number; (8) the name and
16 address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect
17 during the pay period and corresponding number of hours worked at each hourly rate by the
18 employee...” (Lab. Code § 226.) Labor Code section 226, subdivision (e), provides that if an
19 employer knowingly and intentionally fails to provide a statement itemizing, inter alia, the gross
20 and net wages earned, the total hours worked by the employee and the applicable hourly overtime
21 rates, causing the employee injury, then the employee is entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each
23 subsequent violation, up to four thousand dollars (\$4,000). Plaintiff is informed and believes that
24 Defendants willfully failed to make or keep accurate records for Plaintiff and aggrieved
25 employees.

26 59. The IWC Wage Orders require that every employer shall keep accurate
27 information with respect to each employee, including time records showing when each employee
28 begins and ends each work periods, the total daily hours worked by each employee and the total

1 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes
2 that Defendants willfully and intentionally failed to make and/or keep records which accurately
3 reflect the hours worked by Plaintiff and the Putative Class. Specifically, Plaintiff believes that
4 Defendants did not maintain records for Plaintiff and the Putative Class reflecting their time
5 worked and applicable rate of pay, and did not issue any itemized wage statements.

6 60. An employee is deemed to suffer injury if the employer fails to provide a wage
7 statement containing all of the required information set forth in Labor Code section 226,
8 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper
9 rates of pay, records of missed meal and rest breaks and/or premium pay make it difficult for
10 employees to determine whether they were paid all wages due without complicated calculations
11 and/or reconstruction of records required to be maintained by the employer.

12 61. For each employee suffering an injury as a result of Defendants' knowing and
13 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
14 recover the greater of actual damages or fifty dollars (\$50) for the initial pay period in which a
15 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
16 pay period.

17 62. Plaintiff is informed and believe that Defendants' failure to keep accurate payroll
18 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
19 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
20 Code section 2699, subdivision (f)(2). Plaintiffs and the Putative Class are entitled to penalties of
21 \$100.00 for the initial violation, and \$200.00 for each subsequent violation for every pay period
22 during which these records and information were not kept by Defendants.

23 63. Plaintiff is informed and believes that Defendants' failure to keep and maintain
24 accurate records and information and provide to Plaintiff and the Putative Class itemized wage
25 statements containing all of the information mandated by the Labor Code, as described above,
26 was knowing and intentional, and Plaintiff and the Putative Class are entitled to statutory penalties
27 for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys'
28 fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by

1 law.

2 **FIFTH CAUSE OF ACTION**

3 **Failure to Pay Wages Due upon Termination of Employment**

4 **(Plaintiff against All Defendants)**

5 64. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
6 fully set forth herein.

7 65. Plaintiff is informed and believes, and based thereon alleges, that as part of
8 Defendants' ongoing unfair business practices, Defendants failed to pay all employees all wages
9 earned during their employment at the time of their separation in violation of Labor Code
10 sections 201, 202, and 203.

11 66. Labor Code section 201 provides that employers are required to pay an employee
12 whose employment is terminated by the employer all wages earned and unpaid immediately
13 upon termination.

14 67. Labor Code section 202 requires employers to pay an employee who quits his or
15 her employment all wages earned and unpaid no later than 72 hours thereafter.

16 68. Labor Code section 203 provides that when an employer who fails to pay all wages
17 earned and due to an employee who is discharged or quits within the appropriate timeframes set
18 forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the
19 employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid,
20 up to 30 days.

21 69. Plaintiff and the Putative Class whose employment was severed within four (4)
22 years of the filing of this complaint until the date of entry of judgment, without being paid the
23 proper payments, are entitled to up to thirty (30) days of pay at their regular rate of pay as waiting
24 time penalties, as appropriate to Plaintiff and each member of the Putative Class.

25 **SIXTH CAUSE OF ACTION**

26 **Indemnification for Expenditures or Losses in Discharge of Duties**

27 **(Plaintiff against All Defendants)**

28 70. Plaintiff realleges and incorporates by reference all preceding paragraphs as if

1 fully alleged herein.

2 71. Defendants failed to indemnify Plaintiff and the Putative Class for all necessary
3 expenditures or losses incurred in direct consequence of the discharge of their duties.
4 Specifically, Defendants failed to indemnify Plaintiff and the Putative Class for expenditures in
5 direct consequence of the discharge of their duties to Defendants.

6 72. Defendants have not reimbursed Plaintiff and the Putative Class for all
7 expenditures. Plaintiff and the Putative Class are therefore entitled to be paid damages, attorneys'
8 fees, costs, and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well
9 as all statutory penalties, against Defendants in accordance with Labor Code section 2802,
10 subdivision (d).

11 **SEVENTH CAUSE OF ACTION**

12 **Unfair or Unlawful Business Practices**

13 **(Plaintiff and against All Defendants)**

14 73. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein
15 as if fully alleged herein.

16 74. Plaintiff brings this claim individually and on behalf of the Putative Class.

17 75. Business & Professions Code sections 17200 et seq., known as California's Unfair
18 Competition Law ("UCL"), prohibits unfair competition in the form of any unlawful, unfair, or
19 fraudulent business act or practice.

20 76. Business and Professions Code section 17204 allows "any person who has suffered
21 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
22 a civil action for violation of the UCL.

23 77. Labor Code section 90.5, subdivision (a), states it is the public policy of California
24 to vigorously enforce minimum labor standards in order to ensure employees are not required to
25 work under substandard and unlawful conditions, and to protect employers who comply with the
26 law from those who attempt to gain competitive advantage at the expense of their workers by
27 failing to comply with minimum labor standards.

28 78. Beginning at an exact date unknown to Plaintiff, but at least since the date four

1 years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as
2 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
3 business practices and acts described in this complaint, including but not limited to violations of
4 Labor Code sections 201-204, 226, 226.7, 351, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197,
5 and 2802, as well as other statutes as described above.

6 79. The violations of these laws and regulations, as well as of the fundamental
7 California public policies protecting workers, serve as unlawful predicate acts and practices for
8 purposes of Business and Professions Code sections 17200 et seq.

9 80. As a result of these actions, Plaintiff, on information and belief, alleges that
10 Defendants are able to unfairly compete with other comparable companies in the State of
11 California in violation of Business & Professions Code sections 17000 et seq. Due to these
12 unlawful, unfair and/or fraudulent business practices, Defendants have gained a competitive
13 advantage over other comparable companies doing business in the State of California.

14 81. The victims of these unlawful, unfair and/or fraudulent business practices include,
15 but are not limited to, Plaintiff, putative class members, competing manufacturing and
16 construction companies in the State of California, and the general public. Plaintiff is informed
17 and believes, and based thereon alleges, that Defendants performed the above-mentioned acts
18 with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiff, the
19 Putative Class, other competitors, and the general public.

20 82. Plaintiff's success in this action will enforce important rights affecting the public
21 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
22 of himself.

23 83. Business and Professions Code section 17203 provides that a court may make such
24 orders or judgments as may be necessary to prevent the use or employment by any person of any
25 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
26 prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
27 business practices alleged above.

28 84. Business and Professions Code section 17203 provides that the Court may restore

1 to any person in interest any money or property that may have been acquired by means of such
2 unfair competition. Plaintiff and the Aggrieved Employees are entitled to restitution pursuant to
3 Business and Professions Code section 17203 for wages and payments unlawfully withheld from
4 employees, including the fair value of the meal and rest periods and other losses alleged herein,
5 during the four-year period prior to the filing of this complaint. All remedies are cumulative
6 pursuant to Business and Professions Code section 17205.

7 85. Business and Professions Code section 17202 provides: “Notwithstanding Section
8 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
9 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Aggrieved Employees are
10 entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
11 Professions Code section 17202.

12 86. Plaintiff requests injunctive relief pursuant to Business and Professions Code
13 section 17203 to enjoin Defendants from continuing the unfair/unlawful business practices
14 alleged herein.

15 87. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
16 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
17 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
18 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
19 Code of Civil Procedure section 1021.5 and otherwise.

20 **EIGHTH CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004**

22 **(Plaintiff against all Defendants)**

23 88. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
24 fully alleged herein.

25 89. Plaintiff seeks recovery of penalties under the Private Attorneys General Act of
26 2004 (“PAGA”), Labor Code sections 2698 et seq.

27 90. Section 2699, subdivision (f), of the Labor Code provides for civil penalties for
28 violations of the Labor Code, for which a specific civil penalty is not provided.

1 91. PAGA permits an “aggrieved employee” to recover penalties on behalf of
2 himself/herself and other similarly aggrieved employees subject to violations of the Labor Code.
3 Plaintiff seeks recovery of civil penalties for sections 201-204, 226, 226.7, 351, 510, 512, 1174,
4 1182.12, 1194, 1194.2, 1197, and 2802, and the applicable Wage Order.

5 92. Section 558 of the Labor Code provides for civil penalties for violations of the
6 Labor Code by “any employer or other person,” which includes Defendants BS, BSS, and BP.
7 Labor Code section 558 provides for the award of civil penalties that includes the amount each
8 employee was underpaid, and those underpaid wages are paid to the aggrieved employees.

9 93. Plaintiff is informed and believes Defendants at all relevant times employed one
10 or more employees.

11 94. For those code sections that provide for the recovery of civil penalties, Plaintiff
12 will seek those penalties on behalf of all aggrieved employees. Pursuant to Labor Code section
13 2699, subdivision (f), for those sections of the Labor Code that do not specifically provide for
14 civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100.00) for each
15 aggrieved employee for the initial violation, and two hundred dollars (\$200.00) for each
16 aggrieved employee, per pay period, for each subsequent violation. The “initial violation” occurs
17 during the first pay period following notice of such violations served on Defendant through the
18 letter sent to the LWDA.

19 95. Section 2699, subdivision (a), provides that civil penalties may be “recovered
20 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
21 current or former employees.” (*Ibid.*) Section 2699, subdivision (g), provides that an employee
22 who prevails in a civil action under section 2699 shall be entitled to an award of reasonable
23 attorneys’ fees and costs.

24 96. The State of California, Plaintiff, and aggrieved employees are, therefore, entitled
25 to civil penalties, attorneys’ fees, and costs, according to proof.

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1 **PRAYER FOR RELIEF**

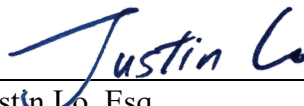
2 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 3 1. That the Court determine that this action may be maintained as a class action under
4 Code of Civil Procedure section 382;
- 5 2. That the Court appoint Plaintiff as Class Representative;
- 6 3. That the Court appoint Work Lawyers, PC as class counsel;
- 7 4. For compensatory and statutory damages;
- 8 5. For restitution of all monies due to Plaintiff and the Putative Class from the unlawful
9 business practices of Defendant;
- 10 6. For injunctive relief;
- 11 7. For statutory and civil penalties according to proof;
- 12 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,
13 subdivision (e), section 218.5, and section 1194, Code of Civil Procedure section
14 1021.5, and/or other applicable laws and/or statutes;
- 15 9. For penalties provided, per each violation, by PAGA, Labor Code section 2699, et
16 seq. for the violations as stated above, either as provided by each applicable Labor
17 Code section or section 2699, subdivision (f); and
- 18 10. For all such other and further relief as the Court may deem just and proper.
- 19

20 Dated: June 4, 2020

WORK LAWYERS, PC

21
22 By:


Justin Lo, Esq.
Attorney for Plaintiff Michael Franchini

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Dated: June 4, 2020

By:


Justin Lo, Esq.
Attorney for Plaintiff Michael Franchini