

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Lopez vs. Wilhelm Electric Co., Inc.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2020-01156888-CU-OE-CXC

I certify that I am not a party to this cause. I certify that the following document(s), STATEMENT OF DECISION dated 03/28/25, was transmitted electronically by an Orange County Superior Court email server on March 28, 2025, at 11:27:19 AM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAR 28 2025

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

GONZALO GABRIEL LOPEZ, on
behalf of himself and all others
similarly situated,

Plaintiff,

v.

WILHELM ELECTRIC CO., INC.,
a California corporation; JOHN
WILHELM, an individual; and
DOES 1 through 100,
Defendants.

30-2020-01156888-CU-OE-CXC

JUDGE MELISSA R. MCCORMICK

Dept. CX104

STATEMENT OF DECISION

The parties tried the claims in this case under the California Labor Code Private Attorneys General Act of 2004 (PAGA) and the California Unfair Competition Law (UCL) to the court on October 21, 22 and 23, 2024. The parties thereafter submitted posttrial briefs and presented closing arguments on March 7, 2025. The court, having heard the evidence, having reviewed and considered the admitted exhibits, and having considered the arguments and applicable law, issued a Tentative Decision and Proposed Statement of Decision on March 10, 2025. ROA 433. Plaintiff Gonzalo Gabriel Lopez

1 filed objections on March 25, 2025 (ROA 438), which the court has read and
2 considered.¹ For the following reasons, the court finds in favor of defendants Wilhelm
3 Electric Co, Inc. and John Wilhelm and against plaintiff Gonzalo Gabriel Lopez.

4 **A. Procedural Background**

5 Plaintiff is Gonzalo Gabriel Lopez. Defendants are Wilhelm Electric Co., Inc. and
6 John Wilhelm.

7 Lopez filed the complaint on August 25, 2020. ROA 2. The court (Judge Peter
8 Wilson) granted Lopez's motion for class certification by order dated August 30, 2022.
9 ROA 166. The court certified the following class and subclasses: Class 1 (nonexempt
10 class); Class 2 (meal period subclass); Class 3 (rest period subclass); Class 4 (late pay
11 subclass); Class 5 (wage statement subclass); and Class 7 (UCL subclass). The court
12 declined to certify Class 6 (expense subclass). By order dated July 6, 2023 (ROA 249),
13 the court (Judge Wilson) denied defendants' motion for summary adjudication.

14 The court ordered the PAGA and UCL claims to be tried first, as a court trial. As
15 noted above, the court trial commenced on October 21, 2024. The PAGA period is
16 January 14, 2019 (TE 1) to October 21, 2024. Brief (ROA 425) at 3 n.4. Lopez
17 identified 38 current or former employees of Wilhelm Electric (including himself) as the
18 alleged "Aggrieved Employees" under PAGA. Brief (ROA 425) at 1:5 & n.1.
19 Defendants do not dispute Lopez's positions regarding the PAGA period and the
20 number of allegedly aggrieved employees.²

21
22 ¹ Lopez also filed a Request for Statement of Decision on March 20, 2025.
23 ROA 436. The purpose of this filing is unclear, as Lopez filed it after the court had
24 issued its Tentative Decision and Proposed Statement of Decision. See Cal. R. Ct.
25 3.1590(c)(1). The court has nevertheless read and considered it.

26 ² Lopez's briefs (ROA 425, 431) exceed the page limits (10/23/25 Order,
27 ROA 401) and violate several rules of court by means of incorrect margins, pages of
28 single-spaced text and improper footnote fonts. See, e.g., Cal. R. Ct. 2.104, 2.107,
2.108. In addition, Lopez's briefs contain numerous string citations to trial exhibit
numbers without even a parenthetical explanation as to the significance of the exhibits.
In some cases, the exhibits were not addressed with any witness at trial. The court
declines to attempt to discern the purpose for which Lopez cites these exhibits and

1 **B. Lopez's Claims**

2 Lopez asserts the following claims under PAGA (Complaint, ROA 2):

- 3 1. Failure to pay minimum wage, Lab. Code³ §§ 1194, 1197;
- 4 2. Failure to pay overtime, § 510;
- 5 3. Failure to provide compliant meal periods, § 512, and failure to provide a
- 6 meal period premium where a meal period was missed or interrupted,
- 7 § 226.7;
- 8 4. Failure to provide compliant rest periods, § 226.7, and failure to provide a
- 9 rest period premium where a rest period was missed or interrupted,
- 10 § 226.7;
- 11 5. Failure to reimburse necessary business expenses, § 2802;
- 12 6. Waiting time penalties, §§ 201, 202, 203;
- 13 7. Failure to provide compliant wage statements, § 226; and
- 14 8. Failure to maintain accurate records, § 1174.

15 Lopez also asserts a claim for restitution under the UCL.

16 **C. Witnesses and Admitted Evidence**

17 Lopez called the following witnesses in his case-in-chief: plaintiff Gonzalo

18 Gabriel Lopez, Jason Hitt, Joshua Hitt, defendant John Wilhelm (pursuant to Civ. Proc.

19 Code § 776) and expert witness Teresa Fulimeni. Lopez also introduced deposition

20 testimony from Daniel Martinez Salinas.

21

22

23

24 declines to credit Lopez's interpretations of ambiguous exhibits about which no witness

25 testified. *See, e.g., Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197

26 Cal.App.4th 927, 934 ("the trial court had no obligation to undertake its own search of

27 the record 'backwards and forwards to try to figure out how the law applies to the facts'

28 of the case"); *People v. Lee* (2008) 161 Cal.App.4th 124, 130 ("It is not the court's

function to marshal evidence for the parties or to make tactical judgments about how the

parties should present their arguments").

³ All further undesignated references are to the Labor Code.

1 Defendants called the following witnesses in their case: defendant John Wilhem,
2 Jose Flores, Rigoberto (Bob) Batiz, Brian Correa and Weston Felling. Defendants also
3 introduced deposition testimony from Salinas.

4 Lopez recalled Jason Hitt as a rebuttal witness, and introduced deposition
5 testimony from Batiz and Flores in his rebuttal case.⁴

6 1. Lopez's Case-in-Chief

7 a. Plaintiff Gonzalo Gabriel Lopez

8 Lopez testified he worked for Wilhelm Electric as an electrician apprentice from
9 July 2019 to November 2019 and was paid \$22.00 an hour. Tr. (10/21/24) 272; Tr.
10 (10/22/24) 34-35. Lopez testified he worked primarily at Wilhelm Electric jobsites in
11 Irvine and Torrance, and also at a jobsite in Ontario. Tr. (10/21/24) 277. He testified he
12 had worked as an electrician apprentice at another company before working at Wilhelm
13 Electric. Tr. (10/21/24) 270.

14 Lopez testified the jobsite hours at the Irvine location were 6:00 a.m. to 2:30
15 p.m., and the jobsite hours at the Torrance location were "sometimes" 5:00 a.m. to 1:30
16 p.m. Tr. (10/21/24) 278. Lopez testified he worked at Wilhelm Electric jobsites at the
17 same time Jason Hitt and Joshua Hitt worked there. Tr. (10/21/24) 297.

18 Lopez testified he was not permitted to record more than eight hours per work
19 day on his timecard. Tr. (10/21/24) 278-79. Lopez testified John Wilhelm and Lopez's
20 foreman told him to write 6:00 a.m. as his work start time. Tr. (10/21/24) 285. He
21 testified his timecards (TE 18, 20) reflect occasions when he wrote down a start time
22 later than 6:00 a.m. Tr. (10/22/24) 9-10.

23
24
25 ⁴ The court has not considered any evidence not admitted into evidence at
26 trial, or any arguments based on evidence not so admitted. Specifically, the court
27 declines to consider the employee declarations to which Lopez refers in his brief (Brief
28 (ROA 425) at 1:17-18), as those declarations were not admitted at trial. Tr. (10/22/24)
at 113-117, 263-264; Tr. (10/23/24) at 2-3.

1 Lopez testified Jason Hitt, Trevor Ross, Brian Correa and Rigoberto Batiz told
2 him to start work before the scheduled jobsite start time, and to turn in his timecards by
3 text. Tr. (10/21/24) 282-284; Tr. (10/22/24) 15-16. Lopez testified John Wilhelm and
4 Lopez's foreman told him to handwrite his timecards; he testified he never completed
5 his timecards electronically. Tr. (10/21/24) 280. Lopez testified he submitted his
6 handwritten timecards by text to John Wilhelm. Tr. (10/21/24) 279. He testified he did
7 not remember ever being told by John Wilhelm to submit a separate timecard for
8 overtime. Tr. (10/22/24) 8.

9 Lopez testified he worked on average five to six days per week for "about" eight
10 hours per day. Tr. (10/21/24) 279. Lopez testified that when he worked for Wilhelm
11 Electric he was sometimes late for work; he did not know how many times he was late
12 for work, but he did not think he was late 25 times in the five months he worked for
13 Wilhelm Electric. Tr. (10/22/24) 11-13. He testified he worked time he was not
14 permitted to record, such as working during a break or cleaning up after the scheduled
15 jobsite stop time. Tr. (10/21/24) 279.

16 Lopez testified the cleanup started after the jobsite stop time (Tr. (10/22/24) 28-
17 29, 31); he testified the cleanup started before the jobsite stop time (Tr. (10/22/24) 30);
18 he testified the cleanup started "around" the jobsite stop time of 2:30 p.m. (Tr.
19 (10/22/24) 31); and he testified there "could have been" times when the cleanup started
20 before 2:30 p.m., "but it was majority of the time" at 2:30 p.m. (Tr. (10/22/24) 32). Lopez
21 testified the cleanup period lasted "5, 10, maybe even more" minutes. Tr. (10/22/24) 32.
22 He testified he never stopped work at the scheduled stop time. Tr. (10/21/24) 286-87.

23 Lopez testified his handwritten timecards (TE 2) do not accurately reflect the
24 hours he worked because they do not include time when he arrived early or stayed late
25 to clean up. Tr. (10/21/24) 285-86. Lopez testified he began working "about five
26 minutes . . . or maybe five to ten" minutes before the scheduled jobsite start time. Tr.
27 (10/21/24) 286-87. He also testified he "sometimes" started work before the scheduled
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1 start time. Tr. (10/22/24) at 15. Lopez testified Rigoberto Batiz arrived earlier than the
2 scheduled start time and told Lopez the "prep work" to do before his shift started. Tr.
3 (10/22/24) at 21.

4 Lopez testified he was not always provided an uninterrupted 30-minute meal
5 period within the first five hours of his work day, and that he was on call during his lunch
6 breaks. Tr. (10/21/24) 288-289. He testified he had to take his lunch break in his car.
7 Tr. (10/21/24) 289.

8 Lopez testified the "majority of time" his lunch breaks "were pretty much cut
9 short." Tr. (10/21/24) 288. He testified Jason Hitt told him that if he took a lunch break,
10 he would be sent home, and that he was "written up" the day he asked to take a lunch
11 break. Tr. (10/21/24) 288. Lopez testified Jason Hitt interrupted his lunch breaks, and
12 instructed him to return to the jobsite. Tr. (10/21/24) 288. Lopez testified that at the
13 Irvine jobsite, Rigoberto Batiz required him to return early from lunch breaks. Tr.
14 (10/21/24) 288-89.

15 Lopez testified he did not recall John Wilhelm texting or calling him during a meal
16 break. Tr. (10/22/24) 35. He testified John Wilhelm told him to write down when he
17 missed a meal break, and he testified John Wilhelm never told him to write down when
18 he missed a meal break. Tr. (10/22/24) 45-46. He testified defendants never paid him
19 a meal premium. Tr. (10/21/24) 291.

20 Lopez testified he did not regularly receive uninterrupted 10-minute rest breaks.
21 Tr. (10/21/24) 292. Lopez testified his rest breaks were interrupted the "majority of the
22 time." Tr. (10/21/24) 292. Lopez testified that on the occasions when he took a rest
23 break, he could not remember how he was notified it was time to take the break; he
24 testified he would "just go take a 10-minute break," or Jason Hitt or Brian Correa would
25 tell him to take a break. Tr. (10/22/24) at 22. Lopez testified that whether other Wilhelm
26 Electric employees took a break when he did "depend[ed] on the jobsite," that
27 sometimes his rest breaks were not in combination with other breaks, and that the rest
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1 breaks at the Torrance and Ontario job sites were not combined with other breaks. Tr.
2 (10/22/24) 22-23, 25. Lopez testified he did not tell John Wilhelm he was not receiving
3 meal and rest breaks. Tr. (10/22/24) 26-27.

4 Lopez testified he used his personal cell phone for work "just to be on call," and
5 that a foreman would call him to return to the jobsite if needed. Tr. (10/21/24) 275.

6 Lopez testified he purchased hand tools for his work at Wilhelm Electric, and that
7 defendants did not reimburse him for the tools. Tr. (10/21/24) 274. He also testified
8 that he had worked elsewhere as an electrician apprentice before Wilhelm Electric and
9 already owned hand tools when he took the job at Wilhelm Electric. Tr. (10/22/24) 32-
10 33.

11 Lopez testified he had to purchase a safety vest, a hard hat and boots for his
12 work at Wilhelm Electric. Tr. (10/21/24) 274. He also testified that he already had a
13 safety vest, hard hat, safety glasses and boots when he took the job at Wilhelm Electric.
14 Tr. (10/22/24) 33-34. Lopez testified he did not ask defendants to reimburse him for
15 safety equipment. Tr. (10/22/24) 34.

16 Lopez testified he never received a company handbook or any written meal or
17 rest break policies. Tr. (10/21/24) 277.

18 Lopez testified this lawsuit is the second time he has sued an employer, and that
19 he told Joshua Hitt while still working at Wilhelm Electric that he planned to sue
20 defendants. Tr. (10/22/24) 43-44.

21 b. Jason Hitt

22 Jason Hitt testified he worked at Wilhelm Electric from July 2019 to January 2020
23 as a foreman supervising electricians in the field. Tr. (10/21/24) 24-25. Hitt testified he
24 worked at approximately four Wilhelm Electric jobsites during the six to seven months
25 he worked at Wilhelm Electric; he testified he worked at jobsites in Irvine and Torrance.
26 Tr. (10/21/24) 27-29. Hitt testified his "team" consisted of plaintiff Lopez, his son Joshua
27 Hitt and Elicio Nunez, and that sometimes others would join the team as needed. Tr.
28

1 (10/21/24) 32. Hitt testified the scheduled jobsite stop time at the sites at which he
2 worked was "standardly, between 2:30 [p.m.] and 3:30 [p.m.]" Tr. (10/21/24) 77.

3 Hitt testified Wilhelm Electric did not have an electronic timecard system. Tr.
4 (10/21/24) 40. He testified he prepared a handwritten paper timecard each week, and
5 that he submitted his timecard by photographing it on his cell phone and texting the
6 photo to John Wilhelm, followed by handing in the hard copy timecards at the end of
7 each week. Tr. (10/21/24) 26-27, 40. Hitt testified he used a pen to fill in his timecard,
8 and he never used a computer or any other electronic method to complete his timecard.
9 Tr. (10/21/24) 40-41.

10 Hitt testified John Wilhelm told him to enter eight hours on "certain time sheets,"
11 and "then, on another time sheet" to enter overtime hours, and to hand in the separate
12 overtime timecard separately. Tr. (10/21/24) 41, 47, 93-94. Hitt testified Wilhelm
13 Electric had two sets of timecards for each employee: regular time timecards and
14 overtime timecards. Tr. (10/21/24) 94. Hitt testified he submitted his 8-hour timecards
15 by text and that hard copies of the overtime timecards would be picked up or dropped
16 off at the Wilhelm Electric office; he testified he gave the hard copies of both sets of
17 timecards (regular time and overtime) to Weston Felling or Trevor Ross. Tr. (10/21/24)
18 41-42, 93-95. Hitt testified Wilhelm Electric paid him in cash for overtime, but that he
19 was not paid all of the overtime owed because John Wilhelm told him that some of the
20 overtime work was not "payable" because the work was "part of [Hitt's] job duties." Tr.
21 (10/21/24) 43.

22 Hitt testified it "would be really hard to come up with a[n] educated—with a
23 guess" about how much overtime Wilhelm Electric did not pay him. Tr. (10/21/24) 44.
24 He testified that if he worked 40 hours of overtime, he would not be paid for 10 of the 40
25 overtime hours, and that he "would lose anywhere from—sometimes, 3 to 4—2 to 4
26 hours, a day" in unpaid overtime. Tr. (10/21/24) 45.

1 Hitt testified he worked "on an average . . . six days a week, most of the time."
2 Tr. (10/21/24) 37. He also testified he worked "five to six" days per week, "most of the
3 time six" days. Tr. (10/21/24) 37. He testified that the sixth day was a Saturday or a
4 Sunday, usually a Saturday. Tr. (10/21/24) 37. He testified that when he worked a
5 sixth or seventh day, other Wilhelm Electric employees were working too; he testified
6 that at the Irvine jobsite, the Wilhelm Electric employees working on the weekends
7 "would be pretty much the whole company," including plaintiff Lopez, Joshua Hitt,
8 Trevor Ross, Brian Correa and "Cody." Tr. (10/21/24) 38-39. Hitt testified he worked on
9 "average anywhere from 8 to 12 hours" per weekday, and on average "six to eight hours
10 a day" per weekend day. Tr. (10/21/24) 39. Hitt also testified he worked more than 12
11 hours in a day "one to two days a week depending on the week"; and he testified he
12 worked "anywhere from 11 to 13 hours" a day "maybe, once or twice every other week."
13 Tr. (10/21/24) 67.

14 Hitt testified he always completed his timecards by hand, and identified certain
15 timecards introduced at trial as his handwritten timecards. Tr. (10/21/24) 49-50; TE 141
16 (WE000910). He testified that he did not complete the typewritten timecards introduced
17 at trial that bear his name; Hitt testified these timecards do not include the overtime
18 hours written on the handwritten timecards for the same periods. Tr. (10/21/24) 50.

19 Hitt identified text messages containing images of handwritten timecards (TE
20 418, 419) that he testified he sent to John Wilhelm.⁵ Tr. (10/21/24) 55. Hitt testified the
21 hours reflected in the texted timecards differ from the hours reflected in the typewritten
22 timecards in Trial Exhibit 141, and that he was not paid for all of the overtime shown in
23 Trial Exhibits 418 and 419. Tr. (10/21/24) 56-58, 61, 64-66. Hitt testified Wilhelm
24 Electric paid him "25 percent" (in cash) of the overtime recorded in Trial Exhibit 418,
25 "but not all of it." Tr. (10/21/24) 59, 62-63. Hitt testified he could not recall how much of
26

27 ⁵ Despite learning about the lawsuit "four or five years ago" (Tr. (10/21/24)
28 15), Hitt apparently did not provide Trial Exhibits 418 and 419, which were not on the
trial exhibit list, to plaintiff's counsel until the trial. See Tr. (10/21/24) 61.

1 the overtime recorded in Trial Exhibit 419 Wilhelm Electric paid, "but it was pretty
2 standard, across the board, 25 percent of it." Tr. (10/21/24) 66.

3 Hitt testified that he and his son Joshua Hitt worked additional hours every day
4 for six months cleaning up the jobsite after the scheduled stop time. Tr. (10/21/24) 46.
5 He testified that "from time-to-time" he saw other workers cleaning up after the
6 scheduled jobsite stop time. Tr. (10/21/24) 46.

7 Hitt testified he "never" received an uninterrupted 30-minute meal break while
8 working at Wilhelm Electric. Tr. (10/21/24) 70. Hitt also testified that his lunch breaks
9 were interrupted "quite a bit," and that his meal breaks at the Torrance jobsite were
10 interrupted "at least, two to three days a week." Tr. (10/21/24) 68. Hitt testified that the
11 Wilhelm Electric employees he saw working at his jobsites never completely stopped
12 work for a lunch break. Tr. (10/21/24) 85-86. He also testified that other Wilhelm
13 Electric employees at the Torrance jobsite sometimes received meal breaks, but "most
14 [of] the times" they did not. Tr. (10/21/24) 69. Hitt testified that work continued at the
15 jobsites during meal breaks. Tr. (10/21/24) 84. He also testified that "sometimes" work
16 did not stop during meal breaks, and that because "it's so long ago, it's kind [of] hard to
17 remember exactly what happened from week-to week." Tr. (10/21/24) 84. Hitt testified
18 he never received a meal premium for a missed meal period. Tr. (10/21/24) 70-71.

19 Hitt testified he did not regularly receive 10-minute uninterrupted rest breaks, and
20 that when he received rest breaks they were never a full 10 minutes. Tr. (10/21/24) 70.
21 He testified he was never paid for a missed rest break. Tr. (10/21/24) 71.

22 Hitt testified he used his personal cell phone daily to communicate with John
23 Wilhelm, the "general foreman" Trevor Ross, and the electricians he supervised. Tr.
24 (10/21/24) 29-30. He testified he carried his personal cell phone with him throughout
25 the day; and that he was "on call" during work hours and before and after his work shift.
26 Tr. (10/21/24) 71-72. He testified Trevor Ross contacted him on his cell phone between
27 3:30 and 3:45 a.m. about job tasks and job status, and that he received texts and calls
28

1 "several times" at 5:00 p.m. or 6:00 p.m. from Trevor Ross or John Wilhelm. Tr.
2 (10/21/24) 43. Hitt testified he never received reimbursement for cell phone expenses.
3 Tr. (10/21/24) 73-74.

4 Hitt testified he incurred costs for dead batteries, broken tools and replacement
5 tools while working for Wilhelm Electric. Tr. (10/21/24) 72-73. He testified the
6 employees were responsible for their own tools. Tr. (10/21/24) 72. Hitt estimated he
7 spent \$3,500 to \$4,500 purchasing his own hand tools. Tr. (10/21/24) 73. He also
8 testified he spent \$300 to \$400 on tools and equipment for his job at Wilhelm Electric,
9 and that he spent between \$1,475 and \$2,580 on tools for his job at Wilhelm Electric.
10 Tr. (10/21/24) 79, 80-83. Hitt testified Wilhelm Electric did not reimburse him for any of
11 his tools. Tr. (10/21/24) 78.

12 Hitt testified he provided his own hard hat, safety vest, safety glasses and boots.
13 Tr. (10/21/24) 74, 78. Hitt estimated the cost of the hard hat at \$160 to \$200, but
14 testified a hard hat "normally never" has to be replaced. Tr. (10/21/24) 79. Hitt
15 estimated the cost of the safety vest at \$40 to \$80, and his boots at \$465 per pair. Tr.
16 (10/21/24) 80.

17 Hitt testified he was never provided a company handbook or any written policies,
18 and that he never spoke to John Wilhelm about a meal or rest period. Tr. (10/21/24) 33-
19 34.

20 Hitt testified he could not remember when he first heard about this lawsuit, but he
21 thought it was four or five years ago. Tr. (10/21/24) 35. Hitt testified John Wilhelm
22 contacted him to discuss the lawsuit after his employment had ended. Tr. (10/21/24)
23 36, 87. Hitt testified Wilhelm said he would "ride this out, as long as we can, and things
24 will disappear." Tr. (10/21/24) 36, 87-88. Hitt testified Wilhelm offered him money for
25 "shut lips." Tr. (10/21/24) 88. He testified Wilhelm offered him \$15,000, and then "a
26 month or two later" offered him \$25,000. Tr. (10/21/24) 88. Hitt testified he does not
27 remember "exactly the—every single word that was said" because "it's been so long
28

1 ago," but he understood that "'shut lips get checks,'" and that if Hitt wanted money from
2 Wilhelm, he should not testify at the trial. Tr. (10/21/24) 88, 89. Hitt testified Wilhelm
3 did not state that he did not want Hitt to testify, but that Wilhelm "insinuated" it. Tr.
4 (10/21/24) 89. Hitt testified he declined Wilhelm's proposal because Hitt's "moral
5 compass won't allow [him] to do something like that." Tr. (10/21/24) 90.

6 Hitt testified he pleaded guilty to felony forgery and embezzlement, and was
7 sentenced to three years in prison.⁶ Tr. (10/21/24) 100-101.

8 c. Joshua Hitt

9 Joshua Hitt, the son of Jason Hitt, testified he worked at Wilhelm Electric for
10 about three months from late July 2019 to late October 2019. Tr. (10/21/24) 103, 105.
11 Joshua⁷ testified he worked as an electrician apprentice on his father's crew primarily at
12 the Irvine and Torrance jobsites. Tr. (10/21/24) 108-109. Joshua testified he reported
13 to his father (Jason Hitt) and another foreman, depending on the jobsite. Tr. (10/21/24)
14 118. Joshua testified he knows plaintiff Lopez, he worked with Lopez at Wilhelm
15 Electric, and that Lopez told him while they worked together at Wilhelm Electric that
16 Lopez planned to sue Wilhelm Electric. Tr. (10/21/24) 140.

17 Joshua testified Wilhelm Electric did not have an electronic timecard system. Tr.
18 (10/21/24) 121). Joshua testified John Wilhelm told him during his interview to fill out
19 one timecard for the 40-hour workweek and a separate timecard for overtime. Tr.
20 (10/21/24) 107. Joshua testified he submitted his 40-hour timecard by text using his
21 personal cell phone, attached a separate overtime timecard to the 40-hour timecard,
22 and gave the hard copies of the two timecards (regular and overtime) to the job foreman
23
24

25 ⁶ "Evidence that a witness has been convicted of a felony is admissible to
26 attack the witness's credibility. [Citation.] Such evidence is a general attack on a
27 witness's character for honesty." *Piscitelli v. Salesian Society* (2008) 166 Cal.App.4th 1,
28 6-7.

⁷ The court at times refers to Joshua Hitt as "Joshua" to distinguish him
from his father Jason Hitt.

1 to send to the office. Tr. (10/21/24) 106, 108. Joshua testified he never submitted an
2 overtime timecard by text. Tr. (10/21/24) 106.

3 Joshua testified John Wilhelm told him during his job interview that cleanup did
4 not start until after the scheduled jobsite stop time, which meant that Joshua "always"
5 left the jobsite after the scheduled stop time. Tr. (10/21/24) 113-115. Joshua testified
6 cleanup took at least an hour every day, and up to two hours. Tr. (10/21/24) 115-116.
7 Joshua testified he was never paid for the extra time he spent cleaning up after the
8 scheduled jobsite stop time, even though he recorded that time on his overtime
9 timecard. Tr. (10/21/24) 117. Joshua also testified he received \$100 to \$200 in cash as
10 "extra" pay for any overtime hours he recorded on the separate overtime timecard, but
11 he did not always receive payment for overtime hours worked each week. Tr.
12 (10/21/24) 116. Joshua testified that he did not prepare three typewritten timecards
13 bearing his name (TE 176 (WE000907, WE000884, WE000895); Tr. (10/21/24) 123-
14 126), and that the three timecards do not accurately reflect his hours worked because
15 they do not include Saturday overtime or overtime incurred for set up and cleanup. Tr.
16 (10/21/24) 126-127.

17 Joshua testified he worked six days a week "the vast majority" of the time he
18 worked for Wilhelm Electric. Tr. (10/21/24) 119, 127. In response to a question from
19 plaintiff's counsel about, on average, the number of hours per day Joshua believes he
20 worked at Wilhelm Electric, Joshua testified: "So I would've worked closer to the
21 number that my father would've worked, minus maybe an hour to two hours a day." Tr.
22 (10/21/24) 120-121.

23 Joshua testified that at the Torrance jobsite Wilhelm Electric employees
24 offloaded delivered materials before the scheduled jobsite start time, which could take
25 15 minutes to more than an hour. Tr. (10/21/24) 113. Joshua testified that when the
26 offloading occurred, the entire Wilhelm Electric crew of four employees and a foreman
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1 was present. Tr. (10/21/24) 114. Joshua testified he was not paid for the time spent
2 offloading materials before the jobsite start time. Tr. (10/21/24) 116.

3 Joshua testified that "80 percent of the time" he did not receive a complete
4 uninterrupted meal break or rest break, and "every single period that [he] did get of the
5 remainder 20 percent of the time would have been interrupted by a call" instructing him
6 to return earlier to the jobsite, asking him where something was, or telling him what to
7 do when he returned to the jobsite. Tr. (10/21/24) 128-129. Joshua testified he did not
8 remember ever having an uninterrupted break. Tr. (10/21/24) 129. Joshua testified
9 other employees experienced the same treatment, but also testified he does not know
10 whether other employees were interrupted during their meal and rest breaks. Tr.
11 (10/21/24) 129. Joshua testified that when he received lunch breaks at the Irvine jobsite
12 he had lunch at a nearby Chick-fil-A restaurant. Tr. (10/21/24) 109.

13 Joshua testified he never told John Wilhelm he was not receiving meal or rest
14 breaks. Tr. (10/21/24) 137. Joshua testified Wilhelm Electric never paid him for a
15 missed meal or rest break. Tr. (10/21/24) 129.

16 Joshua testified that when Wilhelm Electric hired him, he was expected to have
17 his own hand tools. Tr. (10/21/24) 131-132. Joshua testified he spent about \$1,000 on
18 tools to start work at Wilhelm Electric; he also testified he spent about \$1,800 on tools to
19 start work at Wilhelm Electric and that he had spent \$2,500 by the time he left three
20 months later. Tr. (10/21/24) 132, 133. He testified that because he was a "newer"
21 electrician he "probably damaged around four or five hundred dollars[]" worth of tools.
22 Tr. (10/21/24) 133. Joshua testified Wilhelm Electric did not reimburse him for any tools
23 or equipment (Tr. (10/21/24) 133), and that he never asked John Wilhelm or Wilhelm
24 Electric for reimbursement for tools. Tr. (10/21/24) 137-138.

25 Joshua testified he provided his own safety equipment, he did not know whether
26 safety equipment was available from Wilhelm Electric, and the company did not offer
27 him safety equipment. Tr. (10/21/24) 132. Joshua testified he bought a hard hat, safety
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1 glasses, a safety vest and a flash suit. Tr. (10/21/24) 132. Joshua testified he spent
2 "400-ish bucks" on safety equipment. Tr. (10/21/24) 133. Joshua testified he asked his
3 father Jason Hitt, Trevor Ross and another foreman about reimbursement for safety
4 equipment, and was told by "them" that John Wilhelm expected employees to have their
5 own tools and safety equipment. Tr. (10/21/24) 139. Joshua testified he was told there
6 was no company policy regarding reimbursement for tools and safety equipment. Tr.
7 (10/21/24) 141.

8 Joshua testified he never received a company handbook or written meal or rest
9 break policies, but he saw a printed poster about minimum wage and meal breaks in the
10 Wilhelm Electric office when he interviewed for the job. Tr. (10/21/24) 116, 117-118.

11 d. Defendant John Wilhelm

12 Plaintiff called defendant John Wilhelm to testify in plaintiff's case-in-chief
13 pursuant to Civil Procedure Code section 776. Tr. (10/21/24) 144. Wilhelm testified
14 that Wilhelm Electric is a subcontractor that does commercial electrical work. Tr.
15 (10/21/24) 145, 167. Wilhelm testified he is the sole owner and president of Wilhelm
16 Electric, and that his wife is vice-president. Tr. (10/21/24) 145-146. Wilhelm testified
17 that he is charge of everything at the company, including overseeing employees, paying
18 employees and preparing payroll. Tr. (10/21/24) 165-167. He testified Wilhelm Electric
19 has 14 employees. Tr. (10/22/24) 227.

20 Wilhelm testified that Wilhelm Electric works at commercial construction sites.
21 Tr. (10/21/24) 186. Wilhelm estimated that from January 14, 2019 to October 21, 2024,
22 Wilhelm Electric employees worked at 20 jobsites, "roughly four" at any given time. Tr.
23 (10/21/24) 186. Wilhelm testified that all employees at each jobsite begin their shifts by
24 meeting with the foreman, and that the jobsite day generally starts at 5:00 a.m. or 6:00
25 a.m. depending on the job. Tr. (10/21/24) 186-187.

26 Wilhelm testified he provided employees with timecards to record the hours they
27 worked. Tr. (10/21/24) 188-189. Wilhelm testified he told employees when timecards
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1 should be submitted, and showed new employees how to fill out the timecards. Tr.
2 (10/21/24) 190. Wilhelm testified he instructed employees to write down their hours in
3 their own handwriting.⁸ Tr. (10/21/24) 191. Wilhelm testified that the company never
4 had separate timecards for regular time and overtime. Tr. (10/21/24) 235-236. Wilhelm
5 denied instructing employees to write the jobsite scheduled hours on their timecards
6 rather than the hours they actually worked.⁹ Tr. (10/21/24) 226.

7 Wilhelm testified that employees submitted their timecards to him by text, by
8 email or by dropping the timecards off at the office. Tr. (10/21/24) 192. Wilhelm
9 testified the jobsite foreman would typically inform him if a Wilhelm Electric employee
10 arrived late for work, and that he would learn from the timecards if an employee had left
11 early. Tr. (10/21/24) 213-214.

12 Wilhelm testified that in situations where employees must work overtime, e.g., to
13 meet a jobsite deadline, the employees do not start work before the scheduled jobsite
14 start time, but they may work after the scheduled jobsite stop time if approved. Tr.
15 (10/21/24) 174. Wilhelm testified that if overtime work is required, an employee will
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17 ⁸ Wilhelm testified that a Wilhelm Electric employee created an electronic
18 timecard template on the employee's phone, which several employees used instead of
19 handwriting their timecards because it was faster. Tr. (10/21/24) 244, 249. Wilhelm
20 "guessed" four or five employees used the electronic timecard template for six months
21 or less. Tr. (10/21/24) 245, 251, 254.

22 ⁹ Plaintiff's counsel asked Wilhelm to admit that defendants had not
23 produced any timecards in this case reflecting overtime work, and to admit that Wilhelm
24 Electric had not paid overtime to any employees who worked more than eight hours. Tr.
25 (10/21/24) 229, 230, 234, 262. Wilhelm denied both assertions. *Id.* Exhibits introduced
26 at trial support Wilhelm's testimony. *E.g.*, TE 106 (overtime paid to Andy Santiago); TE
27 142 (WE00977, WE002036) (same); TE 107 (overtime paid to Andy Santiago); TE 142
28 (WE00988, WE002041) (same); TE 108 (overtime paid to Andy Santiago); TE 142
(WE001028, WE002052, WE002061) (same); TE 109 (overtime paid to Andy Santiago);
TE 111 (overtime paid to Andy Santiago); TE 142 (WE001033, WE002073) (same); TE
119 (overtime paid to Brian Correa, Cody Westergaard, Estevan Tovar and Jon
Kaumo); TE 181 (overtime paid to Alex Abonce; WE002392, WE003105); TE 184
(overtime paid to Eduardo Carrillo; WE002389, WE002394, WE003109, WE003114);
TE 412 (overtime paid to Enrique Rodriguez); TE 416 (overtime paid to Steve Della
Croce).

1 discuss it with the jobsite foreman or project manager, who in turn will call Wilhelm for
2 approval. Tr. (10/21/24) 175-176. Wilhelm testified that on some occasions, he calls
3 the jobsite general contractor to determine whether the general contractor will approve
4 overtime work. Tr. (10/21/24) 175-176. Wilhelm testified that when the necessity for
5 overtime work is caused by a general contractor asking Wilhelm Electric to work
6 overtime, the company submits a change order to the general contractor for
7 reimbursement. Tr. (10/21/24) 177. Wilhelm testified that if delay necessitating
8 overtime is caused by Wilhelm Electric's employees, and Wilhelm approved the
9 overtime, the company pays the overtime. Tr. (10/21/24) 178-180. Wilhelm estimated
10 that during the period relevant to this case, he declined to approve requested overtime
11 work between one and five times. Tr. (10/21/24) 180.

12 Wilhelm testified he paid Jason Hitt's overtime in cash at Hitt's request. Tr.
13 (10/21/24) 235, 250, 262. Wilhelm testified he does not have any records of the cash
14 he paid Hitt for overtime. Tr. (10/21/24) 262; Tr (10/22/24) 241.

15 Wilhelm identified the company handbook (TE 9), which he testified he wrote and
16 approved. Tr. (10/21/24) 181. Wilhelm testified that Trial Exhibit 9 was the only
17 handbook in effect during the relevant period, and that it contains all of the company's
18 written policies. Tr. (10/21/24) 182. Wilhelm testified he gave a copy of the handbook
19 to employees upon hiring, but that he did not require employees to sign an
20 acknowledgment of receipt. Tr. (10/21/24) at 182.

21 Wilhelm testified the company handbook (TE 9 (WE000011)) states employees
22 must record the start and stop times of meal periods on their timecards. Tr. (10/21/24)
23 193. Wilhelm testified employees did not do this; he testified he believed "the wage
24 order" did not require employees to record the start and stop times of meal periods, and
25 that Wilhelm Electric has "always taken the hour lunch," which they took after four hours
26 of work. Tr. (10/21/24) 193-194, 200-201. Wilhelm testified that none of the timecards
27 the company produced in this case reflects start and stop times for meal periods or
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1 reflects that a meal period was taken. Tr. (10/21/24) 197-198. Wilhelm testified that, as
2 a result, none of the timecards complies with the company's written policy. Tr.
3 (10/21/24) 198.

4 Wilhelm testified the company has always taken a one-hour lunch break after
5 four hours of working; for example, if work starts at 6:00 a.m., the employees take a
6 one-hour break from 10:00 a.m. to 11:00 a.m. Tr. (10/21/24) 194. Wilhelm testified the
7 one-hour break includes a 30-minute meal period, two 10-minute rest breaks, and an
8 extra 10-minute break. Tr. (10/21/24) 208. He testified that Wilhelm Electric employees
9 never missed a meal period in the relevant period (Tr. (10/21/24) 199), and that
10 operations cease at Wilhelm Electric jobsites for the one-hour break each day without
11 exception. Tr. (10/21/24) 201. Wilhelm testified he knows this because he visits the
12 jobsites and either he or Weston Felling is in contact with the job foreman at each site
13 before or after the one-hour break each day. Tr. (10/21/24) 199-200. Wilhelm testified
14 he did not recall a foreman ever contacting him about a meal period not being taken.
15 Tr.(10/21/24) 200.

16 Wilhelm testified that he communicated with employees using his personal cell
17 phone. Tr. (10/21/24) 209. He testified he would contact a project manager or foreman
18 anytime during the day, but he would not contact other employees outside of the 8-hour
19 jobsite work day and would not contact them during the one-hour break. Tr. (10/21/24)
20 209. Wilhelm testified that some Wilhelm Electric foremen had company cell phones
21 during the relevant period, and that they all had personal cell phones; he also testified
22 that Wilhelm Electric stopped using company cell phones "probably six or seven years"
23 before September 2024. Tr. (10/21/24) 219-221. Wilhelm testified he used his personal
24 cell phone for company business, he texted Wilhelm Electric job locations to employees
25 on their cell phones, and he texted Wilhelm Electric foremen about tasks on their cell
26 phones. Tr. (10/21/24) 221-222. He also testified that Wilhelm Electric employees
27 texted him copies of their handwritten time sheets from their personal cell phones to his
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1 personal cell phone. Tr. (10/21/24) 222. Wilhelm testified he does not have any text
2 messages containing employee timecards, and that he took no steps to preserve them.
3 Tr. (10/21/24) 222-223.

4 Wilhelm testified that during the relevant period, Wilhelm Electric did not have a
5 written policy governing reimbursements for hand tools. Tr. (10/21/24) 183. He testified
6 that the company expected employees to have personal hand tools, which the
7 employees had to purchase and maintain. Tr. (10/21/24) 183.

8 e. Designated deposition testimony of Daniel Martinez Salinas

9 Daniel Martinez Salinas testified by deposition¹⁰ that he started work at Wilhelm
10 Electric in March 2022 as an "inside wireman" and still worked at Wilhelm Electric as of
11 April 4, 2024 (the date of his deposition). He testified he has worked at jobsites in
12 Pomona, Corona, Perris, Los Angeles, Jurupa, Los Alamitos and Yorba Linda.

13 Salinas testified he made \$23.00 per hour in March 2022, and \$29.00 per hour in
14 April 2024. He testified he typically works five days a week and sometimes on
15 Saturdays. Salinas testified he begins work at 6:00 a.m., takes a lunch break at 10:00
16 a.m., resumes work at 11:00 a.m., and stops work at 2:30 p.m. Salinas testified that
17 schedule is the work schedule at all of the Wilhelm Electric jobsites at which he has
18 worked, and that it has been the schedule since he started work at Wilhelm Electric in
19 March 2022. Salinas testified he has never worked more than eight hours in a day.

20 Salinas testified he used to record his time on timecards, but now the company
21 uses an app. Salinas testified that when the company used timecards, he wrote his
22 hours on a timecard and texted a photo of the timecard to John Wilhelm twice a month.

23 Salinas testified he received a copy of the company handbook when he started
24 work at Wilhelm Electric, and that he signed an acknowledgement of receiving the
25 handbook.

26
27 ¹⁰ This summary of Salinas's deposition testimony includes testimony offered
28 by Lopez and defendants. Tr. (10/22/24) 110-112, 121.

1 Salinas testified he did not speak with John Wilhelm about his deposition or the
2 lawsuit, and that neither of his foremen had told him anything about the lawsuit.

3 f. Expert witness Teresa Fulimeni

4 Lopez's expert witness Teresa Fulimeni testified regarding Wilhelm Electric time
5 and pay data and penalty calculations. Tr. (10/22/24) 59-107.

6 2. Defendants' Case

7 a. Jose Flores

8 Jose Flores testified he has worked for Wilhelm Electric for three to four years as
9 an electrician apprentice and as a foreman. Tr. (10/22/24) 123, 135. Flores testified he
10 typically starts work at 6:00 a.m. and ends work at 2:30 p.m. Tr. (10/22/24) 124.

11 Flores testified Wilhelm Electric employees typically break from 10:00 a.m. to
12 11:00 a.m., which consists of a 30-minute lunch break, two 10-minute rest breaks and
13 10 minutes of "bonus time." Tr. (10/22/24) 124. Flores testified Wilhelm Electric
14 operations cease during the one-hour break (Tr. (10/22/24) 124), and that Flores is free
15 to go wherever he wants during the break. Tr. (10/22/24) 126. Flores testified he has
16 never missed a one-hour break while working at Wilhelm Electric. Tr. (10/22/24) 126.
17 He testified John Wilhelm has never interrupted his break, and he has never been
18 placed on call during a meal break, rest break or one-hour break. Tr. (10/22/24) 129.

19 Flores testified that Wilhelm Electric workers begin cleaning up each work day
20 approximately 15 minutes before the scheduled jobsite stop time, and that the cleanup
21 process is always completed by the stop time. Tr. (10/22/24) 127. Flores testified that
22 since working at Wilhelm Electric he has never had any situation where the cleanup
23 process began at 2:30 p.m. Tr. (10/22/24) 127. Flores testified he never stays at work
24 after 2:30 p.m. Tr. (10/22/24) 133.

25 Flores testified that in his years at Wilhelm Electric, the company has never had
26 separate timecards for regular hours and overtime hours; he testified he has always
27 reported his hours on one timecard. Tr. (10/22/24) 127. Flores testified he filled out his
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1 paper timecards himself (Tr. (10/22/24) 127, 130), and texted a photo of the timecard to
2 John Wilhelm. Tr. (10/22/24) 134-135. Flores testified John Wilhelm never told him to
3 record the scheduled jobsite hours on his timecard instead of the hours he actually
4 worked. Tr. (10/22/24) 128. Flores testified he has worked overtime at Wilhelm Electric
5 and has been paid for the overtime; he testified the overtime pay was reflected on his
6 pay stub. Tr. (10/22/24) 136; see also TE 117 (overtime paid to Flores), 118 (same).
7 Flores testified he has never been paid in cash while working at Wilhelm Electric (Tr.
8 (10/22/24) 136), and that he is not aware of John Wilhelm paying anyone in cash. Tr.
9 (10/22/24) 136.

10 Flores testified the company now uses an app called "ExakTime" to record time.
11 Tr. (10/22/24) 129-130. Flores testified he does not recall when he started using the
12 ExakTime app. Tr. (10/22/24) 132. He testified the app records the exact minute Flores
13 arrives at and leaves work. Tr. (10/22/24) 132.

14 Flores testified John Wilhelm gave him a copy of the company handbook when
15 he hired him, and also gave him a safety vest; he did not remember whether John
16 Wilhelm gave him anything else. Tr. (10/22/24) 131. Flores testified he has never
17 asked John Wilhelm to reimburse him for any business expenses. Tr. (10/22/24) 131.

18 Flores testified that John Wilhelm is his boss and asked him to testify at the trial.
19 Tr. (10/22/24) 135.

20 b. Rigoberto (Bob) Batiz

21 Rigoberto (Bob) Batiz testified he has worked as a foreman at Wilhelm Electric
22 for 14 or 15 years. Tr. (10/22/24) 144-145. Batiz testified the Irvine jobsite hours were
23 6:00 a.m. to 2:30 p.m., with a one-hour break at 10:00 a.m., and that Wilhelm Electric
24 employees did not work outside of those hours. Tr. (10/22/24) 146, 157-158.

25 Batiz testified the company break policy was two 15-minute rest breaks and a 30-
26 minute lunch break (Tr. (10/22/24) 161, 163), but that the company instead takes a one-
27 hour break because in the construction industry "it's very difficult" to stop for short
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1 breaks, and "it's always easier and more convenient for everybody to combine the one
2 hour." Tr. (10/22/24) 159; *see also* Tr. (10/22/24) 163 ("[A]t the jobsite, it's always been
3 we do the 1 hour because some of our tasks, . . . we can't stop just for 15 minutes and
4 close everything down, so it's better to do it the 1-hour period").

5 Batiz testified that during the one-hour break Wilhelm Electric employees can go
6 wherever they want. Tr. (10/22/24) 147. Batiz testified that Wilhelm Electric ceases
7 operations during that hour, and all Wilhelm Electric workers take their break during that
8 hour. Tr. (10/22/24) 147.

9 Batiz testified the cleanup process begins around 2:00 p.m., and has never
10 started at 2:30 p.m. Tr. (10/22/24) 149.

11 Batiz testified he knows plaintiff Lopez because Lopez worked for Batiz at the
12 Irvine jobsite. Tr. (10/22/24) 145. Batiz testified he never saw Lopez arrive early at the
13 jobsite to start his shift, and he testified he never told Lopez to arrive early to start work.
14 Tr. (10/22/24) 146-147. Batiz testified he never told Lopez that he needed to be on call
15 during the one-hour break. Tr. (10/22/24) 150.

16 Batiz testified that when the company used timecards, he would handwrite his
17 hours on the timecard. Tr. (10/22/24) 150-151, 152. He testified he recorded his
18 "starting time, which always has been the 6:00 starting time, and then quitting time is at
19 2:30," which Batiz testified were the actual hours he worked. Tr. (10/22/24) 149-150.
20 He also testified that before the company starting using the ExakTime app, he did not
21 keep track of every minute he worked and would approximate the hours he worked. Tr.
22 (10/22/24) 152.

23 Batiz testified he does not recall submitting his timecards by phone; he testified
24 he submitted the handwritten timecards to John Wilhelm. Tr. (10/22/24) 162. He
25 testified he does not recall when the company switched to the ExakTime app. Tr.
26 (10/22/24) 151. Batiz testified he does not arrive at work at exactly 6:00 a.m. each day,
27 but that most days the Wilhelm Electric employees leave the jobsite within a minute or
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1 two of 2:30 p.m. Tr. (10/22/24) 154-155. Batiz testified he does not recall anyone ever
2 staying late. Tr. (10/22/24) 156. Batiz testified that Wilhelm Electric employees always
3 work eight hours per day, and that he has never stayed later. Tr. (10/22/24) 158.

4 c. Brian Correa

5 Brian Correa testified he worked at Wilhelm Electric as a foreman and service
6 technician from approximately 2017 until approximately 2022. Tr. (10/22/24) 165-166,
7 176, 182. Correa testified he knows plaintiff Lopez because Lopez worked for him at
8 two jobsites. Tr. (10/22/24) 166. Correa testified he recalls Lopez arriving 15 to 20
9 minutes late for work "a couple times." Tr. (10/22/24) 167. Correa testified that the
10 jobsite hours at both sites were 6:00 a.m. to 2:30 p.m., with a one-hour break usually
11 around 10:00 a.m. Tr. (10/22/24) 167-168, 169. Correa testified he never saw Lopez at
12 the jobsite early, and he never told Lopez to start work early. Tr. (10/22/24) 168.

13 Correa testified that at both jobsites, when Wilhelm Electric employees took the one-
14 hour break, all Wilhelm Electric operations ceased. Tr. (10/22/24) 168-169. Correa
15 testified he never put Lopez on call during a break at either jobsite. Tr. (10/22/24) 169.

16 Correa testified that the cleanup process took five to ten minutes, and never
17 started at the jobsite stop time. Tr. (10/22/24) 169-170.

18 Correa testified that when he started work at Wilhelm Electric he completed his
19 timecards manually. Tr. (10/22/24) 170, 177. He testified that after filling in the paper
20 timecard, he would text a photo of the timecard to John Wilhem. Tr. (10/22/24) 171.

21 Correa testified that later some employees began using a digital timecard. Tr.
22 (10/22/24) 170, 180. Correa testified he does not know who created the digital
23 timecard; he testified he used the digital timecard and shared it with other employees.
24 Tr. (10/22/24) 170. Correa described the digital timecard as "like a PDF format" an
25 employee could edit himself; Correa testified that after he entered his hours, the digital
26 timecard would calculate the total hours worked based on the hours entered. Tr.
27 (10/22/24) 170-171, 181. Correa testified he used the digital timecard because it was
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1 more convenient than completing the timecards manually. Tr. (10/22/24) 178. Correa
2 testified he would take a screenshot of the completed digital timecard and text it to John
3 Wilhelm; he testified he did not send a "live" version of the completed timecard to John
4 Wilhelm. Tr. (10/22/24) 171.

5 Correa testified that Wilhelm Electric provided him with gloves and a flash suit.
6 Tr. (10/22/24) 171. Correa testified he never asked John Wilhelm to reimburse him for
7 any tools. Tr. (10/22/24) 172.

8 Correa testified he did not recall whether John Wilhelm gave him a copy of the
9 company handbook when he was first hired, but he knows he had a copy of the
10 handbook. Tr. (10/22/24) 171.

11 Correa testified his sister worked in the office at Wilhelm Electric; he testified he
12 does not know whether she still works there because they do not speak much. Tr.
13 (10/22/24) 176-177, 184. Correa testified John Wilhelm "absolutely [did] not" offer him
14 cash in exchange for his trial testimony. Tr. (10/22/24) 184.

15 d. Weston Felling

16 Weston Felling testified he has worked at Wilhelm Electric for more than 12
17 years. Tr. (10/22/24) 186. Felling testified he is currently a project manager, which is a
18 salaried position. Tr. (10/22/24) 186, 193. He testified he has held many other jobs at
19 Wilhelm Electric over the years, including as a foreman. Tr. (10/22/24) 187.

20 Felling testified he knows Lopez because Felling was the project manager for the
21 Torrance jobsite where Lopez worked, as well as the project manager at two other
22 jobsites where Lopez worked. Tr. (10/22/24) 187-188. Felling testified Jason Hitt was
23 the foreman at the Torrance jobsite. Tr. (10/22/24) 187.

24 Felling testified the jobsite hours for the Torrance site were initially 6:00 a.m. to
25 2:30 p.m., and then changed to 5:00 a.m. to 1:30 p.m. Tr. (10/22/24) 188. Felling
26 testified the hours at the other jobsites where Felling worked with Lopez were 6:00 a.m.
27 to 2:30 p.m. Tr. (10/22/24) 188-189.

1 Felling testified he visited the Torrance jobsite almost daily, spending anywhere
2 from 30 minutes to an hour to the entire day at the site. Tr. (10/22/24) 189. He testified
3 he sometimes arrived at the Torrance site by 6:00 a.m.; he testified he never saw Lopez
4 working at the Torrance site before the shift started. Tr. (10/22/24) 189-190. Felling
5 testified he never saw Lopez working after the scheduled shift stop time at the Torrance
6 site. Tr. (10/22/24) 190.

7 Felling testified he was at the Torrance site during the shift break. Tr. (10/22/24)
8 190. Felling testified that when the shift started at 6:00 a.m., the one-hour break was at
9 10:00 a.m., and when the shift started at 5:00 a.m., the one-hour break was at 9:00 a.m.
10 Tr. (10/22/24) 191. Felling testified he saw Wilhelm Electric operations cease during the
11 one-hour break, and that he saw Lopez taking his break. Tr. (10/22/24) 191. Felling
12 testified "ceasing" means "the job site shuts down, so the trades all go take their break,
13 their lunch, and no one works on the site during that period." Tr. (10/22/24) 194. Felling
14 testified that all Wilhelm Electric jobsites take a break without exception. Tr. (10/22/24)
15 194.

16 Felling testified that John Wilhelm is his boss, that he dated Wilhelm's daughter
17 in high school, and that Wilhelm's son is his brother's friend. Tr. (10/22/24) 197.

18 e. Defendant John Wilhelm

19 Defendant John Wilhelm testified he had not spoken to Jason Hitt since Hitt left
20 Wilhelm Electric, and that he did not offer Hitt money. Tr. (10/22/24) 200.

21 Wilhelm denied instructing employees to record jobsite hours instead of hours
22 worked. Tr. (10/22/24) 206. Wilhelm testified that when he hires employees, he tells
23 them to record the hours that they work. Tr. (10/22/24) 206. Wilhelm testified the
24 company does not require employees to start work or do "prep work" before the
25 scheduled jobsite start time. Tr. (10/22/24) 208. Wilhelm testified the cleanup process
26 takes 10 to 20 minutes each day, and starts at approximately 2:00 p.m.; he testified the
27 cleanup process does not start at the scheduled jobsite stop time. Tr. (10/22/24) 210-
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1 211. He testified that if the cleanup process ends before the scheduled jobsite stop
2 time, Wilhelm Electric employees leave; they do not wait to leave until the scheduled
3 stop time. Tr. (10/22/24) 211. Wilhelm testified that under those circumstances,
4 employees are authorized to write the jobsite stop time as their working end time. Tr.
5 (10/22/24) 211.

6 Wilhelm denied that the company does not provide meal and rest breaks. Tr.
7 (10/22/24) 211-212. Wilhelm testified Wilhelm Electric provides a one-hour break,
8 comprised of a 30-minute lunch break, two 10-minute breaks, and 10 minutes "for a
9 bonus period." Tr. (10/22/24) 212. Wilhelm testified that Wilhelm Electric pays
10 employees for 30 of the 60 minutes, and that the unpaid 30 minutes is the meal break.
11 Tr. (10/22/24) 212. Wilhelm testified the company does not require employees to record
12 the start and stop times of the one-hour break because "we were always of the
13 understanding that the wage order allowed us not to record stop and start times for
14 meal—for the hour break." Tr. (10/22/24) 212. Wilhelm testified the company does not
15 enforce the provision of the company handbook that states employees must record the
16 start and stop times of meal periods. Tr. (10/22/24) 212.

17 Wilhelm testified that the one-hour break "just makes more sense. It's time-
18 saving. It's an issue with—for employees to stop and take two 10-minute breaks and a
19 half-hour lunch. For one, the half-hour lunch, there's no time for the employee to go buy
20 lunch, which most employees now don't bring their lunch, so they go buy lunch. So it's
21 a definite benefit for employees to have a full hour to leave the site and go buy lunch."
22 Tr. (10/22/24) 213.

23 Wilhelm testified he knows the company's employees take the one-hour break at
24 the same time because he is on site at many jobs and sees the employees taking the
25 break, and because he speaks with all of the company foremen each day either before
26 10:00 a.m. or "right after" 11:00 a.m. to confirm the break was taken. Tr. (10/22/24)
27 214. Wilhelm testified that all Wilhelm Electric operations cease during the break, and
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1 that employees are free to leave the jobsite during the one-hour break. Tr. (10/22/24)
2 214-215. He testified the company has never required employees to take their breaks
3 in their vehicles. Tr. (10/22/24) 219. Wilhelm testified that sometimes employees return
4 late from the one-hour break, and he does not dock an employee's pay for a late return
5 from a break. Tr. (10/22/24) 215.

6 Wilhelm testified that the company tried "8, 10 years ago . . . on a job in San
7 Diego" to take breaks every two hours, instead of taking a single one-hour break. Tr.
8 (10/22/24) 216. Wilhelm testified "all the employees completely hated it because they
9 never had enough time to go have lunch, and it just broke up the day to where they felt
10 like nothing was productive." Tr. (10/22/24) 216. Wilhelm testified breaking every two
11 hours also created a burden on the company because "for the 10-minute break, they
12 had to shut down, lock up the electrical room, put trench plates on. They had to do that
13 three times instead of one time. So they were essentially shutting down and starting up
14 three times instead of one time for the one-hour lunch." Tr. (10/22/24) 216-217.
15 Wilhelm testified that repeating the start up and cleanup process three times took more
16 time than doing it once for the one-hour break. Tr. (10/22/24) 216-217.

17 Wilhelm testified Lopez was late for work "probably 30" times in the five months
18 he worked for Wilhelm Electric, but Wilhelm did not dock Lopez's pay.¹¹ Tr. (10/22/24)
19 207-208. Wilhelm testified he did not tell Lopez to be on call during his breaks, that
20 Lopez was not on call during his breaks, and that there was no reason for Lopez to be
21 on call during his breaks. Tr. (10/22/24) 217, 232. Wilhelm testified the company has
22 never required employees to be on call during the one-hour break. Tr. (10/22/24) 217,
23 232.

24 Wilhelm testified that Joshua Hitt's testimony that company employees unloaded
25 materials at the Torrance site before the scheduled jobsite start time was "absolutely not
26

27 ¹¹ Wilhelm testified the company paid Lopez \$22.00 an hour, and that
28 California's minimum wage was \$11.00 an hour when Lopez worked at Wilhelm Electric.
Tr. (10/22/24) 228.

1 true" because that jobsite had a guard gate and strict entry requirements for large trucks
2 which did not permit large delivery trucks to enter even at 6:00 a.m. Tr. (10/22/24) 218.

3 Wilhelm testified he has never fired an employee, but that employees have quit.
4 Tr. (10/22/24) 220. He testified there are also occasions where employees neither quit
5 nor are fired, but the company does not have enough work for the employee. Tr.
6 (10/22/24) 220. Wilhelm testified that in those situations he asks the employee if the
7 employee would like to wait for the next job to begin; Wilhelm tells the employee to call
8 him each day to check on the job status. Tr. (10/22/24) 221. Wilhelm testified the
9 company delivers the final check "as soon as it's determined that [an employee is] going
10 to move on." Tr. (10/22/24) 221.

11 Wilhelm testified that Lopez neither quit nor was fired. Tr. (10/22/24) 221. He
12 testified Lopez's "stop date" was November 27, 2019, which was the last day listed on
13 Lopez's timecard. Tr. (10/22/24) 221; TE 168; TE 173. Wilhelm testified December 2,
14 2019 was the date of Lopez's last check because "that's the day that we determined
15 that [Lopez] was no longer going to be with us." Tr. (10/22/24) 221-222. Wilhelm
16 testified that where Trial Exhibit 168 shows more than three days between an
17 employee's "stop date" and the final check date, that employee had been laid off due to
18 lack of work and did not quit. Tr. (10/22/24) 222.

19 Wilhelm testified that the company has never used separate timecards for regular
20 time and overtime. Tr. (10/22/24) 201. Wilhelm recognized the images in Trial Exhibits
21 418 and 419 as timecards from Jason Hitt. Tr. (10/22/24) 203. He testified he did not
22 have any reason to doubt he had received them (Tr. (10/21/24) 236, 241), but he did not
23 recall receiving them and could not verify that he had. Tr. (10/21/24) 236; Tr. (10/22/24)
24 242, 245). Wilhelm testified that if Hitt's timecard reflected 62 hours of overtime,
25 Wilhelm did not question Hitt about the hours and paid the overtime in cash at Hitt's
26 request. Tr. (10/22/24) 203-204, 241. Wilhelm testified "there might have been one or
27 two more" employees that he paid in cash. Tr. (10/22/24) 241.

1 Wilhelm testified Hitt created the typewritten timecards (TE 141) on his cell
2 phone. Tr. (10/21/24) 239, 243, 248-249. Wilhelm testified he does not know why the
3 overtime on the handwritten timecards is not on the typewritten timecards. Tr.
4 (10/21/24) 250. Wilhelm denied creating the typewritten versions of Hitt's timecards.
5 Tr. (10/21/24) 239; Tr. (10/22/24) 245.

6 Wilhelm testified he does not know who created the digital timecard, but he
7 knows that Correa and some other employees had it and used it. Tr. (10/22/24) 204.
8 Wilhelm testified he never had the "live" digital timecard. Tr. (10/22/24) 204. Wilhelm
9 testified that when employees texted him copies of the completed digital timecards, he
10 could not edit the information in the digital timecards. Tr. (10/22/24) 205. Wilhelm
11 denied ever fabricating a timecard. Tr. (10/22/24) 204.

12 Wilhelm testified he never deleted any text messages from employees and he
13 never told anyone to delete any text messages. Tr. (10/22/24) 206. Wilhelm testified
14 he keeps notes on a personal paper monthly desk calendar about employee sick days
15 and requested time off, and throws the calendar pages away at the end of each month.
16 Tr. (10/21/24) 215; Tr. (10/22/24) 205-206.

17 Wilhelm testified the company asks employees not to bring their cell phones to
18 the jobsites because "it's not necessarily safe. It's a distraction because they want to
19 put their music on, and . . . we would prefer that they didn't do that." Tr. (10/22/24) 232.
20 Wilhelm testified that the company tells employees "do not call us[;] we won't call you"
21 during the one-hour break. Tr. (10/22/24) 232.

22 Wilhelm testified the company provides "larger tools," such as "power drills, rotor
23 hammers, large band saws, [and] chipping hammers," and that employees have their
24 own hand tools that they take home with them. Tr. (10/22/24) 230, 231. Wilhelm
25 testified the company once replaced stolen hand tools for an employee, but that no
26 current or former employee has ever asked for reimbursement for the cost of hand tools
27 and equipment. Tr. (10/22/24) 231.

1 Wilhelm testified the company provides safety equipment to its employees, i.e.
2 safety vests, safety glasses, flash suits, hard hats and other safety equipment. Tr.
3 (10/22/24) 229. Wilhelm testified that when the company hires new employees, those
4 who need safety equipment get the safety equipment at that time, but that employees
5 do not always accept the safety equipment because they have safety equipment from
6 prior jobs. Tr. (10/22/24) 229. Wilhelm testified the company provides replacement
7 safety equipment if asked. Tr. (10/22/24) 229-230.

8 3. Plaintiff's Rebuttal Case

9 a. Jason Hitt

10 Jason Hitt testified on rebuttal that he completed work order forms required by
11 the general contractor at the Torrance jobsite to obtain approval for overtime on that job.
12 Tr. (10/23/24) 17-19. Hitt testified that when the general contractor approved overtime
13 on the Torrance job, Hitt was not paid the full amount of approved overtime. Tr.
14 (10/23/24) 20.

15 Hitt also testified regarding eight text messages containing images of handwritten
16 timecards Hitt testified he sent to John Wilhelm; Hitt testified some of the timecards
17 include overtime hours. Tr. (10/23/24) 21-23; TE 425-432. Hitt testified he did not
18 prepare or submit the typewritten timecards for the same pay periods (TE 141) which do
19 not reflect any overtime. Tr. (10/23/24) 21-22, 27-41. Hitt testified Wilhelm Electric did
20 not pay him for any of the overtime reflected in Trial Exhibits 425, 428, 429, 430, 431
21 and 432.¹² Tr. (10/23/24) 27-41.

22
23
24 ¹² Hitt produced Trial Exhibits 425 through 432, which were not on the trial
25 exhibit list, on the last day of trial (October 23, 2024), after he had testified in plaintiff's
26 case-in-chief on October 21, 2024. Lopez's counsel informed the court that counsel did
27 not obtain Trial Exhibits 425 through 432 until the night before Hitt's rebuttal testimony.
28 Tr. (10/23/24) 22-23, 43-44. Hitt testified the time stamp on each exhibit is "probably
when I pulled it and took a screenshot of it . . . yesterday." Tr. (10/23/24) 42. This
testimony, and Hitt's eleventh-hour production of Trial Exhibits 425 through 432, did not
reflect favorably on Hitt's credibility, including because Trial Exhibits 418 and 419, which

1
2 b. Deposition testimony of Rigoberto (Bob) Batiz

3 Plaintiff introduced deposition testimony from Batiz in his rebuttal case. Batiz
4 testified by deposition that he carried his cell phone during the lunch break in case he
5 needed to communicate about deliveries or the jobsite superintendent needed to reach
6 him. Batiz testified the company provided him with a safety vest, but not with a hard hat
7 or boots, and that the company did not reimburse him for the cost of his boots. Batiz
8 testified he purchased his own safety glasses.

9 c. Deposition testimony of Jose Flores

10 Plaintiff introduced deposition testimony from Flores in his rebuttal case. Flores
11 testified by deposition that the foreman at the jobsite at which Flores was working at the
12 time of his deposition (February 3, 2022) talked with Flores about work throughout the
13 day, including during their break. As Flores explained, "I mean, we work together. So
14 I'm talking to him at work. . . . [W]e work together. So we're going to have contact
15 throughout the day at lunch. We're right next to each other." Flores testified he was
16 permitted to leave the jobsite during the lunch break, and that he left the jobsite to get
17 food during the lunch break.

18 **D. Witness Credibility**

19 The court did not find the testimony of plaintiff Lopez, Jason Hitt or Joshua Hitt
20 credible. These witnesses were evasive, vague, claimed not to remember material
21 information, and had to be admonished to answer questions. They also provided
22 internally inconsistent testimony. For example:

- 23 • Lopez testified the cleanup started after the jobsite stop time (Tr.
24 (10/22/24) 28-29, 31); he testified the cleanup started before the jobsite stop time (Tr.
25 (10/22/24) 30); he testified the cleanup started "around" the jobsite stop time (Tr.

26
27
28 Hitt produced when he testified in plaintiff's case-in-chief, contain time stamps
consistent with those on Trial Exhibits 425 through 432.

1 (10/22/24) 31); and he testified there "could have been" times when the cleanup started
2 before the jobsite stop time, "but it was majority of the time" at the stop time (Tr.
3 (10/22/24) 32).

4 • Lopez testified he began working "about five minutes . . . or maybe five to
5 ten" minutes before the scheduled jobsite start time. Tr. (10/21/24) 286-87. He also
6 testified he "sometimes" started work before the scheduled start time. Tr. (10/22/24) at
7 15.

8 • Lopez testified he had to take his lunch break in his car. Tr. (10/21/24)
9 289. He also testified defendants did not tell him he had to take his lunch break in his
10 car. Tr. (10/22/24) 43.

11 • Lopez testified John Wilhelm told him to write down when he missed a
12 meal break. Tr. (10/22/24) 45. He also testified John Wilhelm never told him to write
13 down when he missed a meal break. Tr. (10/22/24) 46.

14 • Lopez testified he purchased hand tools for his work at Wilhelm Electric.
15 Tr. (10/21/24) 274. He also testified he had worked elsewhere as an electrician
16 apprentice before Wilhelm Electric and already owned hand tools when he took the job
17 at Wilhelm Electric. Tr. (10/22/24) 32-33.

18 • Lopez testified he had to purchase a safety vest, a hard hat and boots for
19 his work at Wilhelm Electric. Tr. (10/21/24) 274. He also testified he already had a
20 safety vest, a hard hat, safety glasses and boots when he took the job at Wilhelm
21 Electric. Tr. (10/22/24) 33-34.

22 • Jason Hitt testified Wilhelm Electric had two sets of timecards for each
23 employee: regular time timecards and overtime timecards. Tr. (10/21/24) 94. Hitt
24 testified he submitted his 8-hour timecards by text and that hard copies of the overtime
25 timecards would be picked up or dropped off at the Wilhelm Electric office. Tr.
26 (10/21/24) 41-42, 93-95. Hitt also testified that Trial Exhibits 418, 419 and 425 through
27 432 contain images of handwritten timecards he texted to John Wilhelm, and that
28

1 several of those timecards record regular time and overtime on one card. TE 418, 419,
2 425, 428, 429, 430, 431, 432.

3 • Jason Hitt testified he worked "anywhere from 11 to 13 hours" a day
4 "maybe, once or twice every other week." Tr. (10/21/24) 67. Trial Exhibits 419, 425,
5 426, 427, 428, 430, 431 and 432, which Hitt testified are images of his handwritten
6 timecards (and which cover 16 workweeks, i.e., approximately four months), do not
7 show any days of 11 hours or more.

8 • Jason Hitt testified that work continued at the jobsites during meal breaks.
9 Tr. (10/21/24) 84. He also testified that "sometimes" work did not stop during meal
10 breaks, and that because "it's so long ago, it's kind [of] hard to remember exactly what
11 happened from week-to week." Tr. (10/21/24) 84.

12 • Jason Hitt testified that the Wilhelm Electric employees he saw working at
13 his jobsites never completely stopped work for a lunch break. Tr. (10/21/24) 85-86. He
14 also testified Wilhelm Electric employees at the Torrance jobsite sometimes received
15 meal breaks, but "most [of] the times" they did not. Tr. (10/21/24) 69.

16 • Jason Hitt testified he spent \$300 to \$400 on tools and equipment for his
17 job at Wilhelm Electric. Tr. (10/21/24) 79, 80-83. He also testified he spent between
18 \$1,475 and \$2,580 on tools for his job at Wilhelm Electric. Tr. (10/21/24) 79, 80-83.

19 • Joshua Hitt testified other Wilhelm Electric employees were interrupted
20 during their meal and rest breaks. Tr. (10/21/24) 129. He also testified he does not
21 know whether other employees were interrupted during their meal and rest breaks. Tr.
22 (10/21/24) 129.

23 • Joshua Hitt testified he spent about \$1,000 on tools to start work at
24 Wilhelm Electric. Tr. (10/21/24) 132. He also testified he spent about \$1,800 on tools
25 to start work at Wilhelm Electric. Tr. (10/21/24) 133.

1 Lopez, Jason Hitt and Joshua Hitt, who worked together at the same Wilhelm
2 Electric jobsites, also contradicted each other and/or did not corroborate each another's
3 testimony about their conduct. For example:

4 • Lopez testified the cleanup period lasted "5, 10, maybe even more"
5 minutes. Tr. (10/22/24) 32. Joshua Hitt testified cleanup took at least an hour every
6 day, and up to two hours. Tr. (10/21/24) 115-116.

7 • Lopez testified he began working "about five minutes . . . or maybe five to
8 ten" minutes before the scheduled jobsite start time. Tr. (10/21/24) 286-87. Joshua Hitt
9 testified that at the Torrance jobsite (where Lopez also worked), Wilhelm Electric
10 employees offloaded delivered materials before the scheduled jobsite start time, which
11 could take 15 minutes to more than an hour. Tr. (10/21/24) 113.

12 • Lopez testified Jason Hitt told him that if he took a lunch break, he would
13 be sent home, and that he was "written up" the day he asked to take a lunch break. Tr.
14 (10/21/24) 288. Jason Hitt did not corroborate this testimony.

15 • Lopez testified Jason Hitt interrupted his lunch breaks, and instructed him
16 to return to the jobsite. Tr. (10/21/24) 288. Jason Hitt did not corroborate this
17 testimony.

18 • Jason Hitt testified that he and his son Joshua Hitt worked additional
19 hours every day for six months cleaning up the job site after the scheduled stop time.
20 Tr. (10/21/24) 46. Joshua Hitt testified he worked at Wilhelm Electric for three months.
21 Tr. (10/21/24) 103, 105.

22 • Jason Hitt testified John Wilhelm told him to enter eight hours on "certain
23 time sheets," and "then, on another time sheet" to enter overtime hours and to hand in
24 the separate overtime timecard separately. Tr. (10/21/24) 41, 47, 93-94. Joshua Hitt
25 testified John Wilhelm told him to fill out one timecard for the 40-hour workweek and a
26 separate timecard for overtime. Tr. (10/21/24) 107. Lopez testified he did not
27
28

1 remember ever being told by John Wilhelm to submit a separate overtime timecard. Tr.
2 (10/22/24) 8.

3 • Joshua Hitt testified that when he received lunch breaks at the Irvine
4 jobsite he had lunch at a nearby Chick-fil-A restaurant. Tr. (10/21/24) 109. Lopez
5 testified he was required to take his lunch break in his car. Tr. (10/21/24) 289.

6 • Joshua Hitt testified he asked Jason Hitt, Trevor Ross and another
7 foreman about reimbursement for safety equipment, and was told by "them" that John
8 Wilhelm expected employees to have their own tools and safety equipment. Tr.
9 (10/21/24) 139. Jason Hitt did not corroborate his son's testimony that Joshua asked
10 him about reimbursement for safety equipment, and that Hitt told Joshua that John
11 Wilhelm expected employees to have their own safety equipment.

12 **E. Plaintiff Lopez's Standing**

13 There are two requirements for PAGA standing. "The plaintiff must allege that he
14 or she is (1) 'someone "who was employed by the alleged violator"' and (2) someone
15 "against whom one or more of the alleged violations was committed.'" *Adolph v. Uber*
16 *Technologies, Inc.* (2023) 14 Cal.5th 1104, 1120. As explained below, Lopez did not
17 prove he suffered one or more of the Labor Code violations he alleges.

18 1. Minimum wage and overtime

19 Lopez argues defendants did not pay him for time he allegedly worked before
20 and after the scheduled jobsite start and stop times and during meal and rest periods.
21 Lopez's evidence in support of this argument consists largely of his own testimony,
22 which, as discussed above, the court did not find credible. Moreover, neither Jason Hitt
23 nor Joshua Hitt, both of whom worked with Lopez, credibly corroborated Lopez's
24 testimony that Lopez worked before and after the jobsite start and stop times and during
25 breaks. In addition, other witnesses (e.g., Rigoberto Batiz, Brian Correa, Weston
26 Felling) credibly disputed Lopez's claims that he worked before and after the jobsite
27 start and stop times and during breaks.

1 Lopez also argues defendants did not pay him for “walking time,” i.e., the time
2 Lopez spent walking to his car during breaks. Tr. (10/22/24) 39-40. Lopez contends
3 John Wilhelm “admitted to at least one minute of walking time per shift.” Brief (ROA
4 425) at 8:4. Lopez’s characterization of Wilhelm’s testimony does not accurately
5 describe the testimony. Wilhelm testified that the parking structure at the Torrance
6 jobsite was “right next to the building,” and that it would take “probably a minute” to walk
7 from the parking structure to the jobsite, and Wilhelm testified the parking structure at
8 the Irvine location was “even closer.” Tr. (10/22/24) 218-219. More significantly, Lopez
9 cites no case or statute holding that employers must compensate employees for
10 “walking time” during breaks, and the court has not identified any.

11 In his rebuttal brief, Lopez cites *Huerta v. CSI Electrical Contractors* (2024) 15
12 Cal.5th 908, as support for the proposition that “the time spent walking to and from a
13 suitable rest area during part of any meal break is compensable time.” Rebuttal Brief
14 (ROA 431) at 7:21-24. *Huerta* does not so hold. *Huerta* holds (i) time spent on an
15 employer’s premises “awaiting and undergoing an employer-mandated exit procedure
16 that includes the employer’s visual inspection of the employee’s personal vehicle” is
17 compensable; (ii) time spent driving from a security gate to employee parking lots is
18 compensable as “employer-mandated travel” if the security gate was the “first location
19 where the employee’s presence was required for an employment-related reason other
20 than the practical necessity of accessing the worksite”; and (iii) even if a collective
21 bargaining agreement provides for unpaid meal periods, that time is nonetheless
22 compensable as “hours worked” if the employer “prohibits the employee from leaving
23 the employer’s premises or a designated area during the meal period and if this
24 prohibition prevents the employee from engaging in otherwise feasible personal
25 activities.” *Id.* at 915-16. *Huerta* does not support Lopez’s claim that employers must
26 compensate employees for “walking time” during breaks. Furthermore, defendants
27
28

1 presented credible evidence Wilhelm Electric employees may go anywhere they desire
2 during breaks.¹³ Tr. (10/22/24) 126 (Flores); Tr. (10/22/24) 147 (Batiz).

3 2. Meal and rest periods

4 IWC Wage Order 16 applies to "all persons employed in the on-site occupations
5 of construction, including but not limited to work involving alteration, demolition, building,
6 excavating, renovation, remodeling, maintenance, improvement, and repair work, and
7 work for which a contractor's license is required by the California Business and
8 Professions Code, Division 3, Chapter 9, Sections 7025 et seq." IWC Wage Order No.
9 16-2001 § 1, first paragraph and 2(C). Defendants presented evidence they are
10 licensed electricians and their on-site employees were engaged in demolishing,
11 constructing, installing, testing, maintaining, improving and repairing electrical systems
12 and components. Tr. (10/21/24) 145, 167-168; Tr. (10/22/24) 225-226. Defendants
13 demonstrated Wage Order 16 applies.

14 IWC Wage Order 16 section 6(A)(1) states:

15 "Every employer who has control over wages, hours, or working
16 conditions shall keep accurate information with respect to each
17 employee, including the following:

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19
20 ¹³ Lopez argues defendants' counsel's July 29, 2021 letter to his counsel
21 and enclosed check prove defendants did not pay Lopez all overtime owed. During the
22 lawsuit, defendants' counsel sent plaintiff's counsel a letter stating that "[i]n reviewing
23 Mr. Lopez's timecards in this matter, it was determined that Mr. Lopez worked on
24 Saturday (8/10/19) for 8 hours but added this time to the regular hours column," and
" [Lopez] did the same thing on Saturday (9/28/19)." Counsel enclosed a check for \$211
representing payment for "16 hours at half [Lopez's] hourly rate of \$22.00 per hour" plus
interest. TE 321, 322.

25 Lopez's handwritten timecards show that for August 10, 2019 (7.45 hours) and
26 September 28, 2019 (8.0 hours) Lopez entered his hours in the "REG" column, not the
27 "OT" column. TE 2 (LOPEZ0007), 18, 21 (WE000064). Based on Lopez's entries,
28 Wilhelm Electric initially paid Lopez at the regular rate, not the overtime rate. TE 18, 21.
There is no evidence the payment of Lopez's wages for those pay periods was anything
other than an inadvertent clerical error resulting from Lopez's errors in completing his
timecards, which does not support a finding of violation of section 510.

1 (1) . . . Meal periods, split shift intervals, and total daily hours worked
2 shall also be recorded. *Meal periods during which operations cease*
3 *and authorized rest periods need not be recorded."*

4 IWC Wage Order No. 16-2001 § 6(A)(1) (italics added). Defendants cite section 6(A)(1)
5 as support for the omission from Wilhelm Electric's timecards of the start and stop times
6 of employees' meal periods, i.e., defendants argue Wilhelm Electric employees did not
7 record the start and stop times of their meal periods because operations ceased.

8 Defendants' credible witness testimony supports this contention, and their
9 contention that Wilhelm Electric employees stop work for one hour each work day,
10 which includes a 30-minute meal period, two 10-minute rest breaks and 10 additional
11 minutes:

12 • Salinas testified by deposition that he begins work at 6:00 a.m., takes a
13 lunch break at 10:00 a.m., resumes work at 11:00 a.m., and stops work at 2:30 p.m. He
14 testified that schedule is the work schedule at all of the Wilhelm Electric jobsites at
15 which he has worked, and that it has been the schedule since he started work at
16 Wilhelm Electric in March 2022.

17 • Flores testified that Wilhelm Electric employees typically break from 10:00
18 a.m. to 11:00 a.m., which consists of a 30-minute lunch break, two 10-minute rest
19 breaks and 10 minutes of "bonus time." Tr. (10/22/24) 124. Flores testified that
20 Wilhelm Electric operations cease during the one-hour break (Tr. (10/22/24) 124), and
21 that Flores is free to go wherever he wants during the break. Tr. (10/22/24) 126. Flores
22 testified he has never missed a one-hour break while working at Wilhelm Electric. Tr.
23 (10/22/24) 126. Flores testified John Wilhelm has never interrupted his break, and he
24 has never been placed on call during a meal break, rest break or one-hour break.¹⁴ Tr.
25 (10/22/24) 129.

26
27 ¹⁴ Plaintiff characterizes Flores's agreement with plaintiff's counsel's
28 statement that Flores "grab[s] [his] bags" and tools when he arrives at a jobsite before
6:00 a.m. (Tr. (10/22/24) 142) as evidence Flores started work before 6:00 a.m.

1 • Batiz testified the jobsite hours at the Irvine site were 6:00 a.m. to 2:30
2 p.m., with a one-hour lunch break at 10:00 a.m. Tr. (10/22/24) 146. Batiz testified that
3 during the one-hour break Wilhelm Electric employees can go wherever they want. Tr.
4 (10/22/24) 147. Batiz testified that Wilhelm Electric ceases operations during that hour,
5 and that all Wilhelm Electric workers take their break during that hour. Tr. (10/22/24)
6 147. Batiz testified he never told Lopez that he needed to be on call during the one-
7 hour break.¹⁵ Tr. (10/22/24) 150.

8 • Correa testified the jobsite hours at the sites where Correa worked with
9 Lopez were 6:00 a.m. to 2:30 p.m., with a one-hour break usually around 10:00 a.m. Tr.
10 (10/22/24) 167-168, 169. Correa testified that at both jobsites, when the Wilhelm
11 Electric employees took the one-hour break, all Wilhelm Electric operations ceased. Tr.
12 (10/22/24) 168-169. Correa testified he never put Lopez on call during a break at either
13 job site. Tr. (10/22/24) 169.

14 • Felling testified he was at the Torrance jobsite during the shift break. Tr.
15 (10/22/24) 190. Felling testified that when the shift started at 6:00 a.m., the one-hour
16 break was at 10:00 a.m., and when the shift started at 5:00 a.m., the one-hour break
17 was at 9:00 a.m. Tr. (10/22/24) 191. Felling testified he saw Wilhelm Electric
18 operations cease during the one-hour break. Tr. (10/22/24) 191. Felling testified
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21 Rebuttal Brief (ROA 431) at 3:23-25. The court observed Flores's testimony and
22 understood Flores to refer to gathering items in his vehicle upon arrival at work, not to
starting work before 6:00 a.m.

23 ¹⁵ Plaintiff argues Batiz was "impeached" with his deposition testimony that
24 the "company's meal period policies" were two 15-minute rest breaks and a 30-minute
25 lunch break. Brief (ROA 431) 16:9; Tr. (10/22/24) 161, 163; Rebuttal Brief (ROA 431)
26 6:8-9, 7:15-16, 8 n.6. The court observed Batiz's testimony, including about his
27 deposition testimony, and does not find Batiz's testimony impeached as Batiz did not
28 refer to a different onsite practice of separate meal and rest periods, but rather to a
company policy different from the practice in the field. See Tr. (10/22/24) 163 ("That
was the policy, but . . . at the jobsite, it's always been we do the 1 hour because some
of our tasks, . . . we can't stop just for 15 minutes and close everything down, so it's
better to do it the 1-hour period").

1 “ceasing” means “the job site shuts down, so the trades all go take their break, their
2 lunch, and no one works on the site during that period.” Tr. (10/22/24) 194. Felling
3 testified that all Wilhelm Electric jobsites take a break without exception. Tr. (10/22/24)
4 194.

5 • Wilhelm testified Wilhelm Electric provides a one-hour break, comprised
6 of a 30-minute lunch break, two 10-minute breaks, and 10 minutes “for a bonus period.”
7 Tr. (10/22/24) 212. Wilhelm testified he knows the company’s employees take the one-
8 hour break at the same time because he is on site at many jobs and sees the
9 employees taking the break, and because he speaks with all of the company foremen
10 each day either before 10:00 a.m. or “right after” 11:00 a.m. to confirm the break was
11 taken. Tr. (10/22/24) 214. Wilhelm testified that all Wilhelm Electric operations cease
12 during the break, and that employees are free to leave the jobsite during the one-hour
13 break. Tr. (10/22/24) 214-215.

14 Citing *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, Lopez argues
15 Wilhelm Electric’s combined one-hour break “fails to comply with California law.” Brief
16 (ROA 425) at 16:19. In *Rodriguez*, a case addressing the wage order applicable to the
17 manufacturing industry that specifies that rest periods should fall in the middle of work
18 periods “insofar as practicable,” the court interpreted the phrase “insofar as practicable”
19 as “direct[ing] employers to implement the specified rest break schedule absent an
20 adequate justification why such a schedule is not capable of being put into practice, or
21 is not feasible as a practical schedule.” *Id.* at 1040. The same phrase appears in
22 section 11(A) of IWC Wage Order 16. See IWC Wage Order No. 16-2001 § 11(A)
23 (“Every employer shall authorize and permit all employees to take rest periods, which
24 insofar as practicable shall be in the middle of each work period.”). The *Rodriguez* court
25 “conclude[d] that a departure from the preferred schedule is permissible only when the
26 departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a
27 material burden that would be imposed on the employer by implementing the preferred
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1 schedule.” *Rodriguez*, 246 Cal.App.4th at 1040. “[T]he departure must be predicated
2 on facts demonstrating that the preferred schedule would impose a material burden on
3 the employer, and that the departure is necessary to alleviate such burden.” *Id.* at
4 1041.

5 Defendants demonstrated the existence of considerations adequate to justify a
6 departure from the preferred scheduled, i.e., adequate to justify a combined one-hour
7 break. Wilhelm testified that the one-hour break “just makes more sense. It’s time-
8 saving. It’s an issue with—for employees to stop and take two 10-minute breaks and a
9 half-hour lunch. For one, the half-hour lunch, there’s no time for the employee to go buy
10 lunch, which most employees now don’t bring their lunch, so they go buy lunch. So it’s
11 a definite benefit for employees to have a full hour to leave the site and go buy lunch.”
12 Tr. (10/22/24) 213.

13 Wilhelm testified that the company tried “8, 10 years ago . . . on a job in San
14 Diego” to take breaks every two hours, instead of taking a single one-hour break. Tr.
15 (10/22/24) 216. Wilhelm testified “all the employees completely hated it because they
16 never had enough time to go have lunch, and it just broke up the day to where they felt
17 like nothing was productive.” Tr. (10/22/24) 216. Wilhelm testified that breaking every
18 two hours also created a burden on the company because “for the 10-minute break,
19 they had to shut down, lock up the electrical room, put trench plates on. They had to do
20 that three times instead of one time. So they were essentially shutting down and
21 starting up three times instead of one time for the one-hour lunch.” Tr. (10/22/24) 216-
22 217. Wilhelm testified that repeating the start up and cleanup process three times took
23 more time than doing it once for the one-hour break. Tr. (10/22/24) 216-217.

24 Batiz testified that the company takes a one-hour break because in the
25 construction industry “it’s very difficult” to stop for short breaks, and “it’s always easier
26 and more convenient for everybody to combine the one hour.” Tr. (10/22/24) 159. Batiz
27 also testified that “[a]t the jobsite, it’s always been we do the 1 hour because some of
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1 our tasks, . . . we can't stop just for 15 minutes and close everything down, so it's better
2 to do it the 1-hour period." Tr. (10/22/24) 163.

3 3. Business expenses

4 Lopez argues defendants did not reimburse him for tools and safety equipment.
5 IWC Wage Order 16 section 8(B) states:

6 "When the employer requires the use of tools or equipment or they are
7 necessary for the performance of a job, such tools and equipment
8 shall be provided and maintained by the employer, except that an
9 employee whose wages are at least two (2) times the minimum wage
10 may provide and maintain hand tools and equipment customarily
11 required by the particular trade or craft in conformity with Labor Code
12 Section 2802."

13 IWC Wage Order No. 16-2001 § 8(B).

14 Lopez testified Wilhelm Electric paid him \$22.00 per hour, and Lopez states in
15 his brief that the minimum wage in California in 2019 when he worked at Wilhelm
16 Electric was \$11.00 per hour. Brief (ROA 425) at 8:11. Moreover, Lopez testified he
17 already had hand tools when he took the job at Wilhelm Electric. Tr. (10/22/24) 32-33.
18 Lopez did not prove Wilhelm Electric was required to reimburse him for tools and
19 equipment.

20 Lopez testified he already had a safety vest, a hard hat, safety glasses and boots
21 when he took the job at Wilhelm Electric. Tr. (10/22/24) 33-34. Lopez did not prove he
22 incurred any expenses for safety equipment while working at Wilhelm Electric. See
23 *Gallano v. Burlington Coat Factory of Cal., LLC* (2021) 67 Cal.App.5th 953, 960
24 (elements of section 2802 claim are (1) employee made expenditures or incurred
25 losses; (2) the expenditures or losses were incurred in direct consequence of
26 employee's discharge of duties or obedience to employer's directions; and (3)
27 expenditures or losses were necessary).

1 Lopez also argues defendants did not reimburse him for cell phone expenses for
2 texting photos of his timecards to John Wilhelm and allegedly being on call during his
3 breaks. Lopez contends an employer must reimburse an employee for cell phone
4 expenses anytime an employer knows or has reason to know an employee is using a
5 personal cell phone for work purposes. Rebuttal Brief (ROA 431) 9:20-21. Lopez cites
6 no law so holding, and the court has not identified any.

7 Pursuant to section 2802(a), "[a]n employer shall indemnify his or her employee
8 for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the
10 directions of the employer" In *Cochran v. Schwan's Home Service, Inc.* (2014)
11 228 Cal.App.4th 1137, the court addressed, and answered, the following question:
12 "Does an employer always have to reimburse an employee for the reasonable expense
13 of the mandatory use of a personal cell phone, or is the reimbursement obligation
14 limited to the situation in which the employee incurred an extra expense that he or she
15 would not have otherwise incurred absent the job? The answer is that reimbursement is
16 always required." *Id.* at 1144. The court explained: "If an employee is required to
17 make work-related calls on a personal cell phone, then he or she is incurring an
18 expense for purposes of section 2802. . . . To show liability under section 2802, an
19 employee need only show that he or she was required to use a personal cell phone to
20 make work-related calls, and he or she was not reimbursed. " *Id.* at 1144-45.

21 Lopez did not show he was required to use his personal cell phone for work
22 purposes. There was ample evidence presented that many employees texted copies of
23 their timecards to John Wilhelm, and that John Wilhelm was aware of this practice. No
24 evidence was presented, however, that Wilhelm Electric *required* Lopez to submit his
25 timecards by personal cell phone. To the contrary, John Wilhelm testified that
26 employees submitted their timecards to him by text, by email or by dropping the
27 timecards off at the office. Tr. (10/21/24) 192. Batiz testified he did not remember
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1 submitting his timecards by phone; he testified he submitted his timecards to John
2 Wilhelm. Tr. (10/22/24) 162.

3 As to Lopez's claim that Wilhelm Electric required him to be on call during his
4 breaks, the court did not, as discussed above, find Lopez's testimony credible. In
5 addition, other witnesses credibly disputed Lopez's claim. For example:

6 • Batiz testified he never told Lopez that he needed to be on call during the
7 one-hour break. Tr. (10/22/24) 150.

8 • Correa testified he never put Lopez on call during a break at either jobsite
9 where they worked together. Tr. (10/22/24) 169.

10 • Flores testified he has never been placed on call during a meal break, rest
11 break or one-hour break. Tr. (10/22/24) 129.

12 • Wilhelm testified he did not tell Lopez to be on call during his breaks, that
13 Lopez was not on call during his breaks, and that there was no reason for Lopez to be
14 on call during his breaks. Tr. (10/22/24) 217, 232. Wilhelm testified the company has
15 never required employees to be on call during the one-hour break. Tr. (10/22/24) 217,
16 232.

17 4. Waiting time penalties, wage statements, and failure to keep accurate
18 records

19 Lopez argues Wilhelm Electric did not timely pay him wages owed on his
20 employment separation. Lopez argues Wilhelm Electric laid him off effective November
21 27, 2019, but his final check was dated December 2, 2019. Brief (ROA 425) 18:26;
22 Rebuttal Brief (ROA 431) 9:11. "DLSE Opinion Letter 1996.05.30 and the DLSE
23 Manual . . . establish that a temporary layoff with no specific return date within the
24 normal pay period is a discharge within the meaning of § 201, requiring the immediate
25 payment of accrued wages." *Hartstein v. Hyatt Corporation* (9th Cir. 2023) 82 F.4th
26 825, 831.

1 Lopez cites Trial Exhibits 25, 26 and 173 in support of his claim that Wilhelm
2 Electric did not timely pay him on separation. Brief (ROA 425) 18:26; Rebuttal Brief
3 (ROA 431) 9:11. Trial Exhibit 26 is a November 27, 2019 letter from John Wilhelm to
4 Lopez that states: "We regret to inform you that you are being laid off from your position
5 at Wilhelm Electric Co. Inc. effective 11/27/19 due to lack of work. . . . We have included
6 your final paycheck in this packet along with a timecard of the two days worked in the
7 last pay period." TE 26. The "included . . . packet" is not attached to Trial Exhibit 26,
8 and, while the parties stipulated to admit Trial Exhibit 26 into evidence, neither party
9 elicited any testimony from any witness about this document or otherwise addressed the
10 statement in Trial Exhibit 26 that Lopez's final payment was included with the November
11 27, 2019 letter. If the final check was included with the letter, Lopez's waiting time claim
12 fails.

13 Lopez argues Trial Exhibit 173 proves Wilhelm Electric did not timely pay him on
14 separation. Trial Exhibit 173 is entitled "Wilhelm Electric Co. Inc. Date of Last Check –
15 Employee List"; its columns include employee name, hire date, "date of last check," and
16 "stop date." TE 173. Lopez's "date of last check" on Trial Exhibit 173 is December 2,
17 2019, and his "stop date" is November 27, 2019. Trial Exhibit 25 is (i) Lopez's pay stub
18 for the pay period November 16, 2019 to November 27, 2019, with a "pay date" of
19 December 2, 2019; and (ii) Lopez's handwritten timecard for the pay period November
20 16, 2019 to November 27, 2019. TE 25.

21 Lopez argues his final check was untimely because the "date of last check" in
22 Trial Exhibit 173 (and the "pay date" on the pay stub in Trial Exhibit 25) are five days
23 after Lopez's "stop date" in Trial Exhibit 173. Lopez argues the "stop date" was the
24 "layoff date." *Compare* Brief (ROA 425) at 18:24 *with* Rebuttal Brief (ROA 431) 9:11.

25 The only trial testimony about Lopez's stop date and layoff date does not support
26 Lopez's contention that the stop date and the layoff date were the same. John Wilhelm
27 testified he has never fired an employee, but that employees have quit. Tr. (10/22/24)
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1 220. He testified there are also occasions where employees neither quit nor are fired,
2 but the company does not have enough work for the employee. Tr. (10/22/24) 220.
3 Wilhelm testified that in those situations he asks the employee if the employee would
4 like to wait for the next job to begin; Wilhelm tells the employee to call him each day to
5 check on the job status. Tr. (10/22/24) 221. Wilhelm testified the company delivers the
6 final check "as soon as it's determined that [an employee is] going to move on." Tr.
7 (10/22/24) 221.

8 Wilhelm testified that Lopez neither quit nor was fired. Tr. (10/22/24) 221. He
9 testified Lopez's "stop date" was November 27, 2019, which was the last day listed on
10 Lopez's timecard, i.e., November 27, 2019 was the last day of the last pay period during
11 which Lopez worked at Wilhelm Electric. Tr. (10/22/24) 221; TE 25. Wilhelm testified
12 December 2, 2019 was the date of Lopez's last check because "that's the day that we
13 determined that [Lopez] was no longer going to be with us . . . ;" i.e., December 2, 2019
14 was Lopez's layoff day as it was the day the company determined Lopez was "going to
15 move on." Tr. (10/22/24) 221-222. If Lopez's layoff day was December 2, 2019 and his
16 final check was paid December 2, 2019, Lopez's waiting time claim fails.

17 In short, under Lopez's theory, his waiting time claim requires a finding that
18 Wilhelm Electric laid Lopez off on November 27, 2019, but did not issue his final check
19 until December 2, 2019. The evidence in the record supporting Lopez's claim that
20 Wilhelm Electric laid him off on November 27, 2019 is Trial Exhibit 26, the letter stating
21 that Lopez was "laid off from [his] position at Wilhelm Electric Co. Inc. effective 11/27/19
22 due to lack of work." Trial Exhibit 26 also states, however, that Lopez's final check is
23 enclosed with that letter. Lopez introduced no evidence addressing the discrepancy
24 between the November 27, 2019 letter stating the final check was enclosed and Lopez's
25 final pay stub bearing a December 2, 2019 date. The weight of the evidence introduced
26 at trial indicates either (i) the layoff occurred on November 27, 2019 and the check was
27 enclosed with the layoff letter, or (ii) the layoff occurred on December 2, 2019 and the
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1 check was issued December 2, 2019. Under either scenario, Lopez's waiting time
2 claims fails. Lopez did not present sufficient evidence to prove that Wilhelm Electric laid
3 him off on November 27, 2019, but did not pay him until December 2, 2019.

4 Lopez argues Wilhelm Electric's wage statements violated section 226(a)
5 because Wilhelm Electric did not pay Lopez all wages owed, and that, for the same
6 reason, Wilhelm Electric did not maintain accurate records of Lopez's work hours and
7 meal periods. As discussed above, Lopez did not prove that he performed work for
8 which he was not paid or that he was owed meal and rest period premiums. Lopez's
9 derivative wage statement and records claims therefore also fail.¹⁶

10 Lopez cites *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, for the
11 proposition that "when the employer fails to present proper records of an employee's
12 time worked, it is an error of law for the trial court to determine that an employee's offer
13 of proof is inadequate." Brief (ROA 425) at 7:11-13. *Hernandez* does not apply here.

14 In *Hernandez*, the parties did not dispute that the appellant had worked unpaid
15 overtime. The trial court found that the respondents' time records during the disputed
16 period were false, but concluded that the appellant's evidence required the trial court to
17 guess as to the amount of overtime worked, and thus found the appellant had not
18 carried his burden of proof "with regard to certainty." *Id.* at 725. The appellate court
19 explained that when an employer's records are inaccurate or inadequate, an employee
20 should not be penalized by denying him any recovery on the ground that he is unable to
21 prove the precise extent of uncompensated work. *Id.* at 727. The court stated that in
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23
24 ¹⁶ Lopez argues for the first time in his rebuttal brief that his wage
25 statements did not include the amount of sick pay he had accrued, and thus violated
26 section 246(b)(1). Rebuttal Brief (ROA 431) at 9:4-6. The court declines to consider
27 this undeveloped argument, which in any event is supported only by a string citation of
28 trial exhibit numbers with no explanation of their purported relevance and no
corresponding trial testimony. The court is not obliged to marshal evidence for Lopez
and formulate arguments. See, e.g., *Quantum Cooking Concepts*, 197 Cal.App.4th at
934; *People v. Lee*, 161 Cal.App.4th at 130.

1 such a situation an employee carries his burden if he proves that he has in fact
2 performed work for which he was improperly compensated and if he produces sufficient
3 evidence to show the amount and extent of that work as a matter of just and reasonable
4 inference, which then shifts the burden to the employer to produce evidence of the
5 precise amount of work performed or with evidence to negate the reasonableness of the
6 inference to be drawn from the employee's evidence. *Id.* In contrast to the appellant in
7 *Hernandez*, Lopez did not prove he performed work for which he was not properly
8 compensated.

9 **F. UCL claim**

10 Lopez did not address his UCL claim in his closing briefs or at closing argument.
11 The court thus finds Lopez abandoned the UCL claim, which is in any event derivative
12 of his other claims.

13 **G. Conclusion**

14 For the foregoing reasons, the court finds in favor of defendants Wilhelm Electric
15 Co., Inc. and John Wilhelm and against plaintiff Gonzalo Gabriel Lopez. As the court
16 has found that Lopez did not prove he suffered any of the Labor Code violations he
17 alleges, the trial court proceedings are concluded. Defendants are ordered to submit a
18 proposed judgment by April 4, 2025.

19 Clerk to give notice.

20
21 Dated: March 28, 2025



Melissa R. McCormick
Judge of the Superior Court