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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JULIO RAMIREZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BEN'S ASPHALT, INC., a California
corporation; BEN'S ASPHALT &
MAINTENANCE COMPANY, INC., a
California corporation; SKEFFINGTON
ENTERPRISES, INC., a California
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

1. Breach of Contract;
2. Failure to Pay Prevailing Wages;
3. Failure to Pay Minimum Wages;
4. Failure to Pay Overtime Wages;
5. Failure to Provide Meal Periods;
6. Failure to Permit Rest Breaks;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay All Wages Due Upon Separation of Employment;
9. Recovery under Public Works Payment Bonds; and
10. Violation of Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Julio Ramirez, individually, and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Julio Ramirez (“Plaintiff”) brings this putative class action against
5 Defendants Ben’s Asphalt, Inc., Ben’s Asphalt & Maintenance Company, Inc., Skeffington
6 Enterprises, Inc., and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of
7 himself individually and a putative class of California citizens who are and were employed by
8 Defendants as non-exempt employees throughout California.

9 2. Defendants are in the business of providing asphalt maintenance services.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay Plaintiff and Class Members the prevailing wage rate in
17 Southern California for their category of work;
- 18 (b) failing to pay all wages (including minimum wages and overtime
19 wages);
- 20 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (d) failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
- 23 (e) failing to provide accurate itemized wage statements;
- 24 (f) failing to pay all wages due upon separation of employment.

25 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all others
26 similarly situated in California to recover, among other things, unpaid wages and benefits,
27 interest, attorneys’ fees, costs and expenses, and penalties under Labor Code §§ 201-203, 226,
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226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 1771, 1774, 1815, 3098, 3247-3252, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action under California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action under the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this

1 Complaint and serve such fictitiously named defendants once their names and capacities
2 become known.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
5 at all relevant times.

6 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
10 the employer and/or joint employer of Plaintiff and the Class Members.

11 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of all Defendants were in accordance with, and represent, the
15 official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment or ratified every act or omission complained of herein. At all
18 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
19 and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
25 himself and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiff seeks
28 relief authorized by California law.

1 20. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California within four years prior to the filing of
5 this action to the date the class is certified ("Class").

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 within three years prior to the filing of this action to the date the class is certified
10 ("Subclass" or "Waiting Time Subclass").

11 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants breached various public sector contracts, of which
20 Plaintiff and Class Members were intended third-party beneficiaries, by
21 failing to pay Plaintiff and Class Members prevailing wages under Labor
22 Code section 1770 *et seq.*

23 (b) Whether Defendants failed to pay Plaintiff and Class Members the
24 prevailing wage rate in Southern California for their category of work.

25 (c) Whether Defendants failed to pay Plaintiff and Class Members all wages
26 (including minimum wages and overtime wages) for all hours worked by
27 Plaintiff and Class Members.

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- 1 (d) Whether Defendants required Plaintiff and Class Members to work over
2 eight (8) hours per day, over twelve (12) hours per day, over forty (40)
3 hours per week, and/or seven (7) consecutive days and failed to pay them
4 overtime compensation at the proper rate.
- 5 (e) Whether Defendants deprived Plaintiff and Class Members of timely
6 meal periods or required Plaintiff and Class Members to work through
7 meal periods without proper compensation.
- 8 (f) Whether Defendants deprived Plaintiff and Class Members of rest breaks
9 or required Plaintiff and Class Members to work through rest breaks
10 without proper compensation.
- 11 (g) Whether Defendants failed to provide Plaintiff and Class Members
12 accurate itemized wage statements.
- 13 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
14 wages due upon termination or within seventy-two (72) hours of
15 resignation.
- 16 (i) Whether Defendants' conduct was willful or reckless.
- 17 (j) Whether Defendants engaged in unfair business practices in violation of
18 Business and Professions Code §§ 17200, *et seq.*

19 25. There is a well-defined community of interest in this litigation, and the proposed
20 Class and Subclass are readily ascertainable:

21 (a) Numerosity: The Class Members are so numerous that joinder of all
22 members is impractical. Although the members of the entire Class and Subclass are unknown
23 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
24 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
25 inspection of Defendants' employment and payroll records.

26 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
27 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
28 the provisions of California's wage and hour laws entitled each Class Member to similar pay,

1 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
2 sustained by the Class Members because they arise out of and are caused by Defendants'
3 common course of conduct as alleged herein.

4 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
5 interests of all Class Members because it is in his best interest to prosecute the claims alleged
6 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's
7 attorneys, as proposed class counsel, are competent and experienced in litigating large
8 employment class actions and versed in the rules governing class action discovery,
9 certification, and settlement. Plaintiff has incurred and, throughout this action, will continue to
10 incur attorneys' fees and costs that have been and will be necessarily expended for the
11 prosecution of this action for the substantial benefit of the Class Members.

12 (d) Superiority: The nature of this action makes use of class action
13 adjudication superior to other methods. A class action will achieve economies of time, effort,
14 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
15 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
16 same time. If appropriate, this Court can and is empowered to fashion methods to efficiently
17 manage this case as a class action.

18 (e) Public Policy Considerations: Employers in the State of California
19 violate employment and labor laws every day. Current employees are often afraid to assert their
20 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
21 actions because they believe their former employers might damage their future endeavors
22 through negative references and/or other means. Class actions provide Class Members who are
23 not named in the complaint with a type of anonymity that allows for the vindication of their
24 rights while affording them privacy protections.

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GENERAL ALLEGATIONS

26. At all relevant times mentioned herein, Defendants employed Plaintiff and other California residents as non-exempt employees at Defendants' California business location(s).

27. Defendant employed Plaintiff as a non-exempt employee at Defendants' California business locations.

28. Defendants continue to employ non-exempt employees within California.

29. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all time worked (including minimum wages and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum wages and overtime wages) for all hours worked. Defendants failed to pay Plaintiff and Class Members the minimum wage, and to the extent that the hours worked resulted in work in excess of 8 hours a day or 40 hours a week, overtime for time spent driving company trucks for work.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay when they did not receive a timely, uninterrupted meal period. Defendants' policies and practices resulted in Plaintiff and Class Members missing their first meal periods. And,

1 these policies and practices did not provide for second meal periods. Nevertheless, Defendants
2 had a policy and practice of auto-deducting meal periods—without paying premiums.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
6 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
7 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
8 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

9 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and Class Members were entitled to receive itemized wage
11 statements that accurately showed the following information under the Labor Code: (1) gross
12 wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
13 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
14 deductions, provided that all deductions made on written orders of the employee may be
15 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
16 for which the employee is paid; (7) the name of the employee and only the last four digits of his
17 or her social security number or an employee identification number other than a social security
18 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at
20 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
21 were not provided with accurate itemized wage statements. The wage statements issued to
22 Plaintiff and Class Members regularly inaccurately stated the prevailing wage rates, overtime
23 and double-time rates of pay, and gross and net wages earned.

24 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that the Waiting Time Subclass was entitled to the timely payment of
26 wages due upon separation of employment. In violation of the Labor Code, the Waiting Time
27 Subclass did not receive payment of all wages within permissible time periods, including
28 unpaid prevailing wages, the minimum wage, and overtime wages.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed to do so to increase Defendants' profits.

36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on behalf of himself and all Class Members to recover, among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal period premium payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

(Against Defendants)

37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

38. California Civil Code section 1559 provides that a person who is not a party to a contract may nevertheless enforce it if the contract was made expressly for his benefit.

39. Defendants and the State of California (including political subdivisions of the State of California) entered into contracts that they intended to benefit Plaintiff and Class Members. In the contracts, Defendants and the State of California agreed that as a condition of entering into contracts with the State of California for constructing public buildings or public works, Defendants would comply with California's prevailing wage laws and accordingly pay Plaintiff and Class Members.

40. It is "fairly self-evident that the prevailing wage law was enacted to benefit employees as a class by requiring the payment of prevailing wages on public works. [Citations.] Since employees working on the public works projects are the intended beneficiaries of this provision, they are third party beneficiaries of the contract between the public agency and the contractor." *Department of Industrial Relations v. Fidelity Roof Co.*, 60 Cal.App.4th 411, 425-426 (1997).

1 41. Because Defendants failed to pay Plaintiff and Class Members at the legally
2 mandated hourly rate set forth in California's prevailing wage law, Defendants violated California
3 Civil Code section 1559.

4 42. As a direct and proximate result of Defendants' conduct as alleged herein, Plaintiff
5 and Class Members have suffered monetary damages in an amount equal to their unpaid wages,
6 plus interest thereon.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY AT LEAST STRAIGHT-TIME PREVAILING WAGES ON PUBLIC**
9 **WORK PROJECTS**

10 43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 44. At all times mentioned herein, Defendants were subject to the wage
13 requirements of the State of California under Labor Code § 1194 and prevailing wage laws of
14 the State of California. Under Labor Code § 1194, Defendants had a duty to pay their
15 employees, including Plaintiff and Class Members, not less than the minimum required hourly
16 rate of pay as set by the Department of Industrial Relations and legal overtime wages.

17 45. At all times mentioned herein, Defendants were subject to the prevailing wage
18 laws of the State of California under Labor Code § 218.5.

19 46. At all times mentioned herein, Defendants were subject to the prevailing wage
20 laws of the State of California under Labor Code §§ 1771, regarding work undertaken on public
21 construction projects, including but not limited to the Huntington Beach Water Plant and the
22 PCH Water Treatment. Under Labor Code §§ 1771, Defendants had a duty to pay their
23 employees on such projects, including Plaintiff and Class Members, not less than the general
24 prevailing rate of per diem wages for work of a similar character in the locality in which the
25 public work is performed, and not less than the general prevailing rate of per diem wages for
26 holiday and overtime work.

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1 47. At all relevant times herein mentioned, Defendants knowingly failed to pay to
2 Plaintiff and the Class Members all prevailing wages for the hours they worked. Defendants'
3 failure to pay prevailing wages to Plaintiff and the Class Members is a violation of California's
4 minimum wage law, California Labor Code section 1194. "It is well established that
5 California's prevailing wage law is a minimum wage law." *Road Sprinkler Fitters Local Union*
6 *No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 778 (2002). "[B]ecause the
7 prevailing wage law is a minimum wage law mandated by statute and serves important public
8 policy goals, section 1 194 provides an employee with a private statutory right to recover
9 unpaid prevailing wages from an employer who fails to pay that minimum wage." *Id.* at 779;
10 accord, *Reyes v. Van Elk, Ltd.*, 148 Cal.App.4th 604, 612 (2007).

11 48. Accordingly, Plaintiff and the other members of the Class are entitled to recover
12 prevailing wages for hours worked for Defendants under California Labor Code section 1194.

13 49. Plaintiff is informed and believes, and thereon alleges, that the per diem wages
14 and prevailing wages required to be paid under Labor Codes §§ 1194, 1771 and 1774 are set
15 forth in annual and semi-annual bulletins published by the California Department of Industrial
16 relations.

17 50. Each of the Plaintiff's and Class Members' employment periods, hours worked,
18 and trade classifications are based on their individual employment. Plaintiff's employment as a
19 laborer included carrying out various construction assignments, driving heavy machinery, and
20 conducting irrigation. Plaintiff and Class Members' assignment on the projects arose out of the
21 contractual relationship of Defendants with each of the State of California entities and/or
22 political subdivisions of the State of California that awarded the contract.

23 51. During the relevant time, Defendants regularly failed to pay at least minimum
24 wages to Plaintiff and Class Members for all hours worked under Labor Code §§ 1194 and
25 1197, including, but not limited to, time that Defendants required Plaintiff and Class Members
26 to work off-the-clock. For example, Defendants would frequently require Plaintiff and Class
27 Members to work off-the-clock without providing any compensation to Plaintiff and Class
28 Members for this time. To the extent this does not qualify as overtime, Defendants failed to pay

1 Plaintiff and Class Members minimum wage for hours when Defendants required that they
2 arrive at the worksite early, but did not begin to pay them until later in the day, among other
3 things.

4 52. Plaintiff is informed and believes, and thereon alleges that Defendants, and each
5 of them, violated Labor Code §§ 1994, 1771 and 1774, specifically by failing and refusing to
6 comply with the statutory duty to pay Plaintiff and Class Members' prevailing wages as
7 required by the contracts and by statute, or ensure that Plaintiff and Class Members were paid
8 prevailing wages as required by the contracts and by statute. Under these sections, Plaintiff and
9 Class Members are entitled to recover the unpaid balance of their minimum wage
10 compensation as well as interest, costs and attorneys' fees.

11 53. Under Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

13 54. Plaintiff and Class Members are therefore entitled to and request an award of
14 penalties and prejudgment interest on the unpaid wages set forth herein.

15 55. Plaintiff has incurred, and will continue to incur, attorneys' fees in the
16 prosecution of this action and therefore demands such reasonable attorneys' fees and costs as
17 set by the court.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1771, 1774, and 1815; Violation of
21 IWC Wage Order)

22 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 57. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
25 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
26 wage than the minimum so fixed is unlawful.

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1 58. During the relevant time, Defendants paid Plaintiff and Class Members less than
2 minimum wages when they failed to pay proper compensation for all hours worked. To the
3 extent these hours do not qualify for the payment of overtime, Plaintiff and Class Members
4 were not being paid at least the lawful minimum wage for their work.

5 59. During the relevant time, Defendants regularly failed to pay at least minimum
6 wage to Plaintiff and Class Members for all hours worked under Labor Code sections 1194 and
7 1197.

8 60. Defendants' failure to pay Plaintiff and Class Members the required minimum
9 wage violates Labor Code §§ 1194 and 1197. Under these sections, Plaintiff and Class
10 Members are entitled to recover the unpaid balance of their minimum wage compensation as
11 well as interest, costs, and attorneys' fees.

12 61. Under Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover
13 liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest
14 thereon.

15 62. At all times relevant mentioned herein, Plaintiff and Class Members were
16 employed by Defendants on various public works projects which were and are subject to the
17 California Prevailing wage Law under Labor Code §§ 1771, 1774, and 1815, regarding work
18 undertaken on public construction projects.

19 63. Under Labor Code §§ 1771, 1774, and 1815, all workers, including Plaintiff and
20 Class Members employed on public works projects, shall be paid for their work on the public
21 works projects, not less than the general prevailing rate of per diem wages for holiday and
22 overtime work.

23 64. Said prevailing wage rates are disseminated by the State of California's
24 Department of Industrial Relations, and under California laws and regulations, all contractors in
25 the execution of a public works construction project are mandated by law to pay these
26 minimum wages.

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65. At all times relevant mentioned herein, Defendants were subject to the California Prevailing Wage Law, including Labor Code §§ 1771, 1774, and 1815, regarding work undertaken on public works projects.

66. At all times relevant mentioned herein, under §§ 204, 510, 1194, 1771, 1774, and 1815, Plaintiff and Class Members were entitled to pay not less than the general prevailing rate of per diem wages for holiday and overtime performed on public works projects.

67. Upon information and belief, Defendants paid Plaintiff and Class Members less than the required prevailing rate of per diem wages for holiday and overtime hours worked as required by, in violation of Labor Code §§ 204 and 510, and the California Prevailing wage Law.

68. Under Labor Code §§ 1194, 204, 510, 1771, 1774, and 1815, Plaintiff and Class Members are entitled to recover the unpaid balance of their earned prevailing rate of per diem wages for holiday and overtime hours worked during their employment with Defendants on public works.

FOURTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, 1198, 1771, 1774, and 1815; Violation of IWC Wage Order)

69. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

70. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or days worked by the person on a daily or weekly basis.

71. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in

1 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
2 eight (8) hours of work on the seventh day of work in a workweek.

3 72. The applicable IWC Wage Orders further provide that Defendants are and were
4 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
5 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
6 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

7 73. California Labor Code § 510 codifies the right to overtime compensation at one
8 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
9 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
10 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
11 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
12 seventh day of work in a workweek.

13 74. Labor Code § 510 and the applicable IWC Wage Orders provide that
14 employment of more than six days in a workweek is only permissible if the employer pays
15 proper overtime compensation as set forth herein.

16 75. Plaintiff and Class Members were non-exempt employees entitled to the
17 protections of California Labor Code §§ 510 and 1194.

18 76. During the relevant time, Defendants required Plaintiff and Class Members to
19 work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a seventh
20 consecutive day in a workweek without paying Plaintiff and Class Members overtime wages
21 for their work.

22 77. During the relevant time period, Defendants failed to pay Plaintiff and Class
23 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
24 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
25 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in
26 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of
27 work in a workweek.

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1 78. In violation of state law, Defendants knowingly and willfully refused to perform
2 their obligations and compensate Plaintiff and Class Members for all wages earned and all
3 hours worked.

4 79. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
5 overtime and double-time compensation, as required by California law, violates the provisions
6 of Labor Code §§ 510 and 1198 and is therefore unlawful.

7 80. Under Labor Code § 1194, Plaintiff and Class Members are entitled to recover
8 their unpaid overtime and double-time compensation as well as interest, costs, and attorneys'
9 fees.

10 81. At all times relevant mentioned herein, Plaintiff and Class Members were
11 employed by Defendants on various public works projects which were and are subject to the
12 California Prevailing wage Law under Labor Code §§ 1771, 1774, and 1815, regarding work
13 undertaken on public construction projects.

14 82. Under Labor Code §§ 1771, 1774, and 1815, all workers, including Plaintiff and
15 Class Members employed on public works projects, shall be paid for their work on the public
16 works projects, not less than the general prevailing rate of per diem wages for holiday and
17 overtime work.

18 83. Said prevailing wage rates are disseminated by the State of California's
19 Department of Industrial Relations, and under California laws and regulations, all contractors in
20 the execution of a public works construction project are mandated by law to pay these
21 minimum wages.

22 84. At all times relevant mentioned herein, Defendants were subject to the
23 California Prevailing Wage Law, including Labor Code §§ 1771, 1774, and 1815, regarding
24 work undertaken on public works projects.

25 85. At all times relevant mentioned herein, under §§ 204, 510, 1194, 1771, 1774,
26 and 1815, Plaintiff and Class Members were entitled to pay not less than the general prevailing
27 rate of per diem wages for holiday and overtime performed on public works projects.

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1 86. Upon information and belief, Defendants paid Plaintiff and Class Members less
2 than the required prevailing rate of per diem wages for holiday and overtime hours worked as
3 required by, in violation of Labor Code §§ 204 and 510, and the California Prevailing wage
4 Law.

5 87. Under Labor Code §§ 1194, 204, 510, 1771, 1774, and 1815, Plaintiff and Class
6 Members are entitled to recover the unpaid balance of their earned prevailing rate of per diem
7 wages for holiday and overtime hours worked during their employment with Defendants on
8 public works.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

12 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein

14 89. Labor Code § 226.7 provides that no employer shall require an employee to work
15 during any meal period mandated by the IWC Wage Orders.

16 90. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
17 employ any person for a work period of more than five (5) hours without a meal period of not
18 less than 30 minutes, except that when a work period of not more than six (6) hours will
19 complete the day’s work the meal period may be waived by mutual consent of the employer and
20 the employee.”

21 91. Labor Code § 512(a) provides that an employer may not require, cause, or permit
22 an employee to work more than five (5) hours per day without providing the employee with an
23 uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
24 period per day of the employee is not more than six (6) hours, the meal period may be waived
25 by mutual consent of both the employer and the employee.

26 92. Labor Code § 512(a) also provides that an employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second meal period of not less than thirty (30) minutes, except that if the total hours

1 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
2 consent of the employer and the employee only if the first meal period was not waived.

3 93. During the relevant time period, Plaintiff and Class Members did not receive
4 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
5 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
6 second meal period.

7 94. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
8 requires an employer to pay an employee one (1) additional hour of pay at the employee's
9 regular rate of compensation for each workday that a compliant meal period is not provided.

10 95. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
11 period premiums for missed, late, short, and/or interrupted meal periods under Labor Code §
12 226.7(b) and section 11 of the applicable IWC Wage Order.

13 96. As a result of Defendants' failure to pay Plaintiff and Class Members an
14 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
15 Class Members suffered and continue to suffer a loss of wages and compensation.

16 SIXTH CAUSE OF ACTION

17 FAILURE TO PERMIT REST BREAKS

18 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)

19 97. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 98. Labor Code § 226.7(a) provides that no employer shall require an employee to
22 work during any rest period mandated by the IWC Wage Orders.

23 99. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
25 the middle of each work period[,] and the "[a]uthorized rest period time shall be based on the
26 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
27 fraction thereof[,] unless the total daily work time is less than three and one-half (3½) hours.

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100. During the relevant time, Plaintiff and Class Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods, were not permitted to take timely rest periods, and/or were not authorized to take their rest periods.

101. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not provided.

102. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period premiums for missed, late, and/or interrupted rest periods under Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

103. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

104. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

105. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee.

3 106. During the relevant time, Defendants have knowingly and intentionally failed to
4 comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff and Class
5 Members. Defendants provided Plaintiff and Class Members with wage statements that were
6 missing or inaccurately stated one or more of the following items: (1) gross wages earned, (2)
7 total hours worked by the employee, (3) the number of piece-rate units earned and any
8 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
9 that all deductions made on written orders of the employee may be aggregated and shown as
10 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
11 paid, (7) the name of the employee and the last four digits of his or her social security number
12 or an employee identification number other than a social security number, (8) the name and
13 address of the legal entity that is the employer, and/or (9) all applicable hourly rates in effect
14 during the pay period and the corresponding number of hours worked at each hourly rate by the
15 employee.

16 107. As a result of Defendants' knowing and intentional failure to comply with Labor
17 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
18 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
19 injury under Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code
20 § 226(a). Plaintiff and Class Members were denied both their legal right to receive and their
21 protected interest in receiving accurate itemized wage statements under Labor Code § 226(a).
22 Also, because Defendants failed to provide the accurate rates of pay on wage statements,
23 Defendants prevented Plaintiff and Class Members from determining if all hours worked were
24 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this
25 lawsuit to analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses
26 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
27 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also
28 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

108. Plaintiff and Class Members are entitled to recover from Defendants the greater of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

109. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and Class Members from knowing, understanding, and disputing the wages paid to them and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members have suffered an injury, in the exact amount of damages and/or penalties to be shown according to proof at trial.

110. Class Members that are still employed by Defendants are also entitled to injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226. Accordingly, affected Class Members seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201, 202, and 203; Violation of IWC Wage Order)

111. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

112. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately and that if an employee voluntarily leaves his employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

113. During the relevant time, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper

1 minimum wage and overtime compensation, meal period premiums, and rest period premiums
2 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
3 employ.

4 114. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
5 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ
6 violates Labor Code §§ 201 and 202.

7 115. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
8 immediately upon discharge or resignation under Labor Code §§ 201 and 202, then the wages
9 of the employee shall continue as a penalty from the due date at the same rate until paid or until
10 an action is commenced; but the wages shall not continue for more than thirty (30) days.

11 116. Under Labor Code § 203, the Waiting Time Subclass is entitled to recover from
12 Defendants the statutory penalty, which is defined as the Waiting Time SubClass Members'
13 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
14 maximum of thirty (30) days.

15 NINTH CAUSE OF ACTION

16 **RECOVERY UNDER PUBLIC WORKS PAYMENT BOND**

17 (Violation of Labor Code §§ 3247-3252, 3098, against Defendants and DOES 1-10)

18 117. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 118. Plaintiff is informed and believes and based thereon alleges that
21 contemporaneously with the execution of the Contracts for the projects that Defendants and
22 DOES 1-10, as surety, executed a Payment Bond for Labor and Materials to comply with Civil
23 Code §§ 3096 and 3247 through 3252, which was thereafter filed with and approved by the
24 respective State of California entities and/or political subdivisions of the State of California. The
25 bond was conditioned and provided that if DOES 1-10 or any of their insured, and each of them,
26 failed to pay for any work or labor performed on the aforementioned projects of any kind, that
27 the surety on the bond would pay the same.

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119. Plaintiff is informed and believes and thereon alleges that as a further condition of the payment bond on the projects, Defendants and DOES 1-10, and each of them, promised and agreed to pay reasonable attorneys' fees to be fixed by the court in case suit was brought on the bond and undertaking.

120. Under Civil Code §§ 3248 and 3250, Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees in the sum to be fixed by the Court, for costs of suit, and prejudgment interest as set by law.

121. Plaintiff and Class Members “performed actual labor for wages” pursuant to Civil Code § 3098, and are therefore not required to file a preliminary 20-day notice.

122. Plaintiff is informed and believes and thereon alleges that there is now due, owing, and unpaid from Defendants wages for labor performed on the projects by Plaintiff and Class Members. Plaintiff and Class Members seek as damages the difference between the amount paid and the prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff and Class Members claim said damages, together with interest thereon, at the maximum legal rate, according to proof.

123. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demands such reasonable attorneys' fees and costs as set by the court

TENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

124. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

125. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice”

126. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies

1 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
2 suffer injuries-in-fact.

3 127. Defendants' policies and practices violated state law in at least the following
4 respects:

- 5 (a) Breaching their contracts with State of California entities and/or political
6 subdivisions of the State of California by failing to pay Plaintiff and
7 Class Members prevailing wages, as herein alleged.
- 8 (b) Failing to compensate Plaintiff and Class Members with prevailing wages
9 as herein alleged in violation of Labor Code §§ 1770 *et seq.*, 1197, and
10 1194.
- 11 (c) Failing to compensate Plaintiff and Class Members with overtime wages
12 in violation of Labor Code §§ 1198 and 1815.
- 13 (d) Failing to pay all wages earned (including minimum wage and overtime
14 wages) to Plaintiff and Class Members in violation of Labor Code §§
15 510, 1182.12, 1194, 1194.2, 1197, and 1198.
- 16 (e) Failing to provide compliant meal periods without paying Plaintiff and
17 Class Members premium wages for every day said meal periods were not
18 provided in violation of Labor Code §§ 226.7 and 512.
- 19 (f) Failing to authorize or permit compliant rest breaks without paying
20 Plaintiff and Class Members premium wages for every day said rest
21 breaks were not authorized or permitted in violation of Labor Code §
22 226.7.
- 23 (g) Failing to provide Plaintiff and Class Members with accurate itemized
24 wage statements in violation of Labor Code § 226.

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1 (h) Failing to timely pay all earned wages to the members of the Waiting
2 Time Subclass upon separation of employment in violation of Labor
3 Code §§ 201, 202, and 203.

4 128. As alleged herein, Defendants systematically engaged in unlawful conduct in
5 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
6 (minimum and overtime wages), failing to provide meal periods and rest breaks or
7 compensation in lieu thereof, failing to furnish accurate wage statements, and failing to pay all
8 wages due and owing upon separation of employment on time, all to decrease their costs of
9 doing business and increase their profits.

10 129. At all relevant times herein, Defendants held themselves out to Plaintiff and
11 Class Members as being knowledgeable concerning the labor and employment laws of
12 California.

13 130. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
14 and Class Members wages and monies, thereby creating for Defendants an artificially lower
15 cost of doing business to undercut their competitors and establish and/or gain a more significant
16 foothold in the marketplace.

17 131. As a result of Defendants' intentional, willful, purposeful, and wrongful
18 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
19 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
20 according to proof at trial.

21 132. By violating the foregoing statutes and regulations as herein alleged,
22 Defendants' acts constitute unfair and unlawful business practices under California Business
23 and Professions Code §§ 17200, *et seq.*

24 133. As a result of the unfair and unlawful business practices of Defendants, as
25 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
26 restitution in an amount to be shown according to proof at trial.

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1 134. Plaintiff is informed and believes, and thereon alleges, that Defendants bid
2 contracts with public entities knowing that Defendants did not intend to pay the prevailing
3 wage rate to its workers.

4 135. Plaintiff is informed and believes, and thereon alleges, that other contractors
5 who bid on these public sector contracts were unsuccessful in securing these contracts due to
6 Defendants' ability to outbid them because Defendants knew and planned that Defendants'
7 actual wage rate to Defendants' employees would be considerably less than the other bidders.

8 136. Plaintiff is informed and believes, and thereon alleges, that every other bidder
9 was prejudiced because of Defendants' unlawful business practices and that because of these
10 practices, Defendants, and each of them, are unjustly enriched.

11 137. Plaintiff is informed and believes, and thereon alleges, that Defendants are
12 unjustly enriched through their failure to pay the prevailing wage rates.

13 138. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
14 Members are prejudiced by Defendants' unfair trade practices in the Defendants' actual wages
15 were reduced below the prevailing wage rate so that Defendants could successfully bid on these
16 public entity contracts.

17 139. Defendants intentionally avoided paying Plaintiff and Class Members' wages
18 and monies, thereby creating for Defendants an artificially lower cost of doing business to
19 undercut their competitors and establish and gain a more significant foothold in the
20 marketplace.

21 140. Plaintiff seeks to enforce important rights affecting the public interest within the
22 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
23 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
24 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
25 Members are entitled to an award of attorneys' fees under California Code of Civil Procedure §
26 1021.5.

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1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;
2. For the appointment of Julio Ramirez as the class representative;
3. For the appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages under Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those under the Labor Code and IWC Wage Orders;
9. For injunctive relief, as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution, as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired utilizing any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
12. For pre-judgment interest;
13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e) and 1194; and

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14. For such other relief as the Court deems just and proper.

Dated: February 13, 2020

AEGIS LAW FIRM, PC

By: _____

Suren N. Weerasuriya
Attorneys for Plaintiff Julio Ramirez

DEMAND FOR JURY TRIAL

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

Dated: February 13, 2020

AEGIS LAW FIRM, PC

By: _____

Suren N. Weerasuriya
Attorneys for Plaintiff Julio Ramirez