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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JASON PINA, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

MARMOL RADZINER AN
ARCHITECTURAL CORPORATION
doing business in California and DOES 1
through 50, inclusive,

Defendants.

Case No.:

20STCV15899

CLASS ACTION

COMPLAINT FOR DAMAGES

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

REQUEST FOR JURY TRIAL

Plaintiff JASON PINA ("Plaintiff" or "Mr. Pina"), on behalf of himself and all employees similarly situated, complains and alleges as follows:

INTRODUCTION

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

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

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

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

- (a) Willfully refusing to pay all hours worked, including both regular, overtime, and minimum wages;
- (b) Willfully refusing to pay separate compensation for non-productive time worked;
- (c) Willfully refusing to permit off-duty meal periods or providing compensation in lieu thereof;
- (d) Willfully refusing to permit rest periods or providing compensation in lieu thereof;

- 1 (e) Willfully refusing to furnish accurate itemized wage statements upon payment
2 of wages;
3 (f) Willfully refusing to pay all wages due upon separation of employment;
4 (g) Willfully refusing to pay for expenditures or losses in the discharge of their
5 duties; and
6 (h) Willfully engaging in unfair business practices.

7 **JURISDICTION AND VENUE**

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

13 6. Defendants are California corporations believed to be doing business in the State
14 of California.

15 7. Defendant MARMOL RADZINER AN ARCHITECTURAL CORPORATION is
16 a California Company with the headquarter offices located at 12210 Nebraska Avenue, Los
17 Angeles, CA. 90025. There is no federal question at issue, as the issue herein are based solely
18 on California statutes and law, including the Labor Code, Industrial Welfare Commission
19 ("IWC") Wage Orders, Code of Civil Procedure, Business and Professions Code and Rules of
20 Court. By doing business in the state of California, Defendants have purposefully availed
21 themselves of the state's jurisdiction. Accordingly, as personal jurisdiction over Defendants
22 would be constitutional, California's long-arm statute provides that California courts may
23 exercise personal jurisdiction over Defendants. (Code Civ. Pro. § 410.10.)

24 8. Venue is proper in the County of Los Angeles because Defendants perform
25 business in the County of Los Angeles, and the acts set forth herein occurred in the County of
26 Los Angeles.

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1
2 **THE PARTIES**

3 **Plaintiff**

4 9. Plaintiff, at all relevant times herein, was an employee of Defendants from on or
5 about February 14, 2018 until September 24, 2019, as carpenter and construction worker.
6 Plaintiff worked at various job sites throughout California assigned to him by Defendants.
7 Defendants controlled Plaintiff's schedule, trained Plaintiff, and directed him where his duties
8 would be performed each day.

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

14 **Defendants**

15 11. Plaintiff is informed and believes, and based thereon alleges, that MARMOL
16 RADZINER AN ARCHITECTURAL CORPORATION is a California company, headquartered
17 in Los Angeles, and doing business in the state of California, and is and/or was the employer of
18 the Plaintiff and similarly aggrieved employees during the Relevant Time Period. Defendant
19 MARMOL RADZINER AN ARCHITECTURAL CORPORATION has facilities in California,
20 including in Los Angeles County. Defendant MARMOL RADZINER AN ARCHITECTURAL
21 CORPORATION is in the business designing, manufacturing, and constructing buildings
22 throughout California.

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

28 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant

1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
2 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
3 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
4 venture and/or single business enterprise, integrated enterprise and/or are agents of one another,
5 are alter egos, joint employers and conspire with one another to increase profits by engaging in
6 the conduct described in this complaint.

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

14 **PAGA ADMINISTRATIVE PREREQUISITE**

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

22 16. Prior to filing this Complaint, on February 6, 2020, Plaintiff gave written notice
23 by certified mail to the Labor and Workforce Development Agency (hereinafter “LWDA”) and
24 to Defendants of the specified provisions alleged to have been violated, including the facts and
25 theories that support the alleged violation as required by Labor Code section 2699.3. (LWDA
26 Case No. LWDA-CM-771064-20.)

27 17. The LWDA has not provided Plaintiff with any notice that it intends to investigate
28 the violations as alleged in Plaintiff’s LWDA notice and more than 65 calendar days have elapsed

1 since the postmark date of that notice.

2 **FACTUAL ALLEGATIONS**

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

8 19. Defendant is in the business of designing, manufacturing, and constructing
9 buildings throughout California.

10 20. Defendant would provide instructions and the location of the construction site to
11 Plaintiff and Punitive Class.

12 21. Defendants had a pattern and practice of not paying all owed wages to Plaintiff
13 and the Putative Class as a result of an illegal "rounding" policy. Plaintiff and the Putative Class
14 were under compensated as a result of this illegal "rounding" time keeping practice.

15 22. Defendants further failed to reimburse Plaintiff and the Putative Class for any
16 necessary business expenses. Plaintiff and the Putative Class were required to record their
17 compensable work time on an application located on their personal cellular phone. Plaintiff and
18 the Putative Class were not reimbursed for the use of their cellular phone.

19 23. Plaintiff and the Putative Class' compensable work time was not accurately
20 recorded on multiple instances thus resulting in unpaid wages.

21 24. Defendants maintained a uniform practice of compensating Plaintiff and the
22 Putative Class on a piece rate system based on the shed or garage built, regardless of the number
23 of hours actually worked. Plaintiff and Aggrieved Employees frequently worked over eight (8)
24 hours per day and/or over forty (40) hours each week. However, Defendants failed to compensate
25 them the required minimum wage and overtime compensation in violation of the Labor Code
26 and the IWC Wage Orders.

27 25. Furthermore, Defendants failed to provide Plaintiff and the Putative Class with
28 meal periods in violation of the Labor Code and Industrial Welfare Commission ("IWC") Wage

1 Orders. Plaintiff and the Putative Class were entitled to timely, uninterrupted, thirty (30) minute
2 meal periods prior to the end of each five (5) hours worked, but often did not receive these.

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

6 **CLASS ALLEGATIONS**

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

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

18 **Numerosity**

19 29. The potential members of the class as defined are so numerous that joinder of all
20 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
21 Plaintiff is informed and believes that Defendant has employed more than 250 employees at any
22 given time during the Class Period, and that the Putative Class may contain as many as 1000
23 employees total.

24 **Commonality**

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

- 27 a. Whether Defendants failed to pay all wages, including minimum and overtime
28 wages, due to Plaintiff and the Putative Class;

- b. Whether Defendants failed, and continue to fail, to provide meal periods or premium compensation in lieu thereof to Plaintiff and the Putative Class;
- c. Whether Defendants failed, and continue to fail, to authorize and permit Plaintiff and the Putative Class to take rest breaks, or pay premium compensation in lieu thereof;
- d. Whether Defendants failed to furnish wage statements to Plaintiff and the Putative Class containing all information required by Labor Code section 226(a);
- e. Whether Defendants failed to pay all unpaid wages earned during the course of employment to Plaintiff and the Putative Class upon the separation of their employment;
- f. Whether Defendants failed to reimburse Plaintiff and the Putative Class for all necessary business expenditures, including but not limited to the use of their personal vehicles; and
- g. Whether Defendants engaged in unlawful or unfair business practices.

Typicality

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

Adequacy of Representation

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

1 **Superiority of Class Action**

2 33. Under the facts and circumstances set forth above, a class action is superior to any
3 other method available for both the fair and efficient adjudication of the rights of each class
4 members inasmuch as joinder of individual relatively small claims of Putative Class members is
5 not practical, and if each employee were required to file an individual lawsuit, the corporate
6 Defendants would necessarily gain an unconscionable advantage since they would be able to
7 exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Putative
8 Class member to pursue an individual remedy would also discourage the assertion of lawful
9 claims by employees fearful of retaliation and permanent damage to their careers at present
10 and/or subsequent employment. Further, the substantial risk of inconsistent or varying verdicts
11 or adjudications with respect to the individual Class Members against Defendants herein further
12 support class certification.

13 **FIRST CAUSE OF ACTION**

14 **Failure to Pay All Wages Owed, Including Minimum Wage and Overtime**

15 **(Plaintiff Against All Defendants)**

16 34. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
17 fully alleged herein.

18 35. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
19 wage for all industries shall not be less than nine dollars (\$9) per hour, and on and after January
20 1, 2016, the minimum wage for all industries shall not be less than ten (\$10) per hour. For
21 employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the
22 minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January
23 1, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11)
24 per hour. As of January 1, 2019 through December 31, 2019, the minimum wage rate in
25 California is twelve dollars (\$12) per hour. Plaintiff is informed and believes Defendants employ
26 more than 26 employees and thus fall within all requirements of section 1182.12.

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

1 under.

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Premium Compensation in Lieu Thereof (Plaintiff against All Defendants)

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

45. Labor Code sections 226.7 and 512 and IWC Wage Order 16-2001, Sect. 11 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

46. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendants failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

47. At all relevant times, Plaintiff and the Putative Class have worked shifts of more than five (5) hours in a workday.

48. Pursuant to Labor Code section 226.7, Plaintiff and the Putative Class are entitled to damages equal to one (1) hour of wages at their regular rate of pay for each missed meal break, in an amount according to proof.

49. At varying times relevant hereto, Plaintiff and the Putative Class have worked shifts of more than ten (10) hours in a workday.

50. Plaintiff individually, and on behalf of the Putative Class, requests recovery of

1 meal period premium compensation pursuant to Labor Code section 226.7 which they are owed
2 beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory
3 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code
4 and/or other statutes.

5 51. Pursuant to Code of Civil Procedure section 1021.5 and any other applicable
6 provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred
7 in this action.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof** 10 **(Plaintiff against All Defendants)**

11 52. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
12 fully set forth herein.

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

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

21 55. Defendants failed to reasonably make available rest breaks to Plaintiff and the
22 Putative Class during the Relevant Time Period.

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

27 **FOURTH CAUSE OF ACTION**

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

(Plaintiff against All Defendants)

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

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

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

1 60. The IWC Wage Orders require that every employer shall keep accurate
2 information with respect to each employee, including time records showing when each employee
3 begins and ends each work periods, the total daily hours worked by each employee and the total
4 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes
5 that Defendants willfully and intentionally failed to make and/or keep records which accurately
6 reflect the hours worked by Plaintiff and the Putative Class. Specifically, Plaintiff believes that
7 Defendants did not maintain accurate records for Plaintiff and the Putative Class reflecting their
8 time worked and applicable rate of pay. 

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

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

20 63. Plaintiff is informed and believe that Defendants' failure to keep accurate payroll
21 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
22 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
23 Code section 2699, subdivision (f)(2). Plaintiffs and the Putative Class are entitled to penalties of
24 \$100.00 for the initial violation, and \$200.00 for each subsequent violation for every pay period
25 during which these records and information were not kept by Defendants.

26 64. Plaintiff is informed and believes that Defendants' failure to keep and maintain
27 accurate records and information and provide to Plaintiff and the Putative Class itemized wage
28 statements containing all of the information mandated by the Labor Code, as described above,

1 was knowing and intentional, and Plaintiff and the Putative Class are entitled to statutory penalties
2 for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys'
3 fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by
4 law.

5 **FIFTH CAUSE OF ACTION**

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

7 **(Plaintiff against All Defendants)**

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

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

14 67. Labor Code section 201 provides that employers are required to pay an employee
15 whose employment is terminated by the employer all wages earned and unpaid immediately
16 upon termination.

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

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

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

28 **SIXTH CAUSE OF ACTION**

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

2 **(Plaintiff against All Defendants)**

3 71. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
4 fully alleged herein.

5 72. Defendants failed to indemnify Plaintiff and the Putative Class for all necessary
6 expenditures or losses incurred in direct consequence of the discharge of their duties.
7 Specifically, Defendants failed to indemnify Plaintiff and the Putative Class for expenditures
8 including, without limitation, a reasonable percentage of their cellular phone bills, and costs of
9 tools and equipment such as shoes, gloves and lifting belts in direct consequence of the discharge
10 of their duties to Defendants.

11 73. Defendants have not reimbursed Plaintiff and the Putative Class for all
12 expenditures. Plaintiff and the Putative Class are therefore entitled to be paid damages, attorneys'
13 fees, costs, and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well
14 as all statutory penalties, against Defendants in accordance with Labor Code section 2802,
15 subdivision (d).

16 **SEVENTH CAUSE OF ACTION**

17 **Unfair or Unlawful Business Practices**

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

19 74. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein
20 as if fully alleged herein.

21 75. Plaintiff brings this claim individually and on behalf of the Putative Class.

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

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

28 78. Labor Code section 90.5, subdivision (a), states it is the public policy of California

1 to vigorously enforce minimum labor standards in order to ensure employees are not required to
2 work under substandard and unlawful conditions, and to protect employers who comply with the
3 law from those who attempt to gain competitive advantage at the expense of their workers by
4 failing to comply with minimum labor standards.

5 79. Beginning at an exact date unknown to Plaintiff, but at least since the date four
6 years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as
7 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
8 business practices and acts described in this complaint, including but not limited to violations of
9 Labor Code sections 201-204, 226, 226.7, 351, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197,
10 and 2802, as well as other statutes as described above.

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

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

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

25 83. Plaintiff's success in this action will enforce important rights affecting the public
26 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
27 of himself.

28 84. Business and Professions Code section 17203 provides that a court may make such

orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and business practices alleged above.

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

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

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

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

EIGHTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Plaintiff against all Defendants)

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

1 fully alleged herein.

2 90. Plaintiff seeks recovery of penalties under the Private Attorneys General Act of
3 2004 (“PAGA”), Labor Code sections 2698 et seq.

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

6 92. PAGA permits an “aggrieved employee” to recover penalties on behalf of
7 himself/herself and other similarly aggrieved employees subject to violations of the Labor Code.
8 Plaintiff seeks recovery of civil penalties for sections 201-204, 226, 226.7, 351, 510, 512, 1174,
9 1182.12, 1194, 1194.2, 1197, and 2802, and the applicable Wage Order.

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

14 94. Plaintiff is informed and believes Defendants at all relevant times employed one
15 or more employees.

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

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

1 97. The State of California, Plaintiff, and aggrieved employees are, therefore, entitled
2 to civil penalties, attorneys' fees, and costs, according to proof.

3 **PRAYER FOR RELIEF**

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

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

21
22 Dated: April 24, 2020

WORK LAWYERS, PC

23
24 By:


Justin Lo, Esq.

Attorney for Plaintiff JASON PINA

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Dated: April 24, 2020

By: Justin Lo
Justin Lo, Esq.
Attorney for Plaintiff JASON PINA