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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

Attorneys for Plaintiff and the Proposed Class

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

DOMINIC GUTIERREZ, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

FIRE SPRINKLER SYSTEMS, INC.; and
DOES 1 to 50, inclusive,

Defendants.

Case No.: 37-2020-00015511-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Pay Minimum Wages
3. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
5. Violation of Labor Code § 226(a)
6. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
7. Penalties Pursuant to Labor Code § 203
8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff DOMINIC GUTIERREZ, an individual, on behalf of himself, all others
2 similarly situated, complains of Defendant FIRE SPRINKLER SYSTEMS, INC. (“Defendant”)
3 and each of them, as follows:

4 **I**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and a Proposed Class defined as:

8 All persons who are employed or have been employed as an hourly
9 employee by FIRE SPRINKLER SYSTEMS, INC. in the State of
10 California since four (4) years prior to the filing of this action to
the present.

11 2. From at least four (4) years prior to the filing of this action continuing to the
12 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
13 hourly employees for all work perform at the proper rate of compensation. Defendant required
14 Plaintiff and the Proposed Class to travel to and from the home office to pick up and drop off
15 supplies and to turn in time sheets without the proper compensation. Defendant also failed to
16 compensate Plaintiff and the Proposed Class for their drive time beyond their normal commute
17 to and from the home office. Travel time longer than the employee’s normal commute to and
18 from his or her home office is considered compensable. Defendant failed to compensate
19 Plaintiff and the Proposed Class for travel time in excess for the time normally required to
20 report to their home office. As a result, Plaintiff and the Proposed Class were not properly paid
21 for these work tasks as a condition of employment. Defendant’s policies and procedures
22 resulted in the underpayment of minimum wages and/or overtime.

23 3. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant has had a consistent policy of failing to inform employees of their right to
25 take meal periods and requiring employees within the State of California, including Plaintiff, to
26 work at least five (5) hours without a meal period and failing to pay such employees one (1)
27 hour of pay at the employees’ regular rate of compensation for each workday that the meal
28 period is not provided or provided after five (5) hours, as required by California state wage and

1 hour laws.

2 4. For at least four (4) years prior to the filing of this action and continuing to the
3 present, Defendant has had a consistent policy of failing to inform employees of their right to
4 take rest periods and of failing to provide employees within the State of California, including
5 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
6 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
7 compensation for each workday that the rest period was not provided, as required by California
8 state wage and hour laws.

9 5. For at least four (4) year prior to the filing of this action continuing to the
10 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include
11 necessary and required information on wage statements provided to Plaintiff and the Proposed
12 Class. Defendant failed to include the total hours worked, the number of piece-rate units earned
13 and any applicable piece rate if the employee is paid on a piece-rate basis, all applicable hourly
14 rates in effect during the pay period, and the corresponding number of hours worked at each
15 hourly rate by the employee.

16 6. For at least four (4) years prior to the filing of this action and continuing to the
17 present, Defendant has not reimbursed Plaintiff and the Proposed Class the cost and
18 maintenance of their personal vehicles, tools, and personal cell phones necessary to perform
19 their job duties during the relevant time period in violation of Labor Code § 2802.

20 7. Based on the allegations alleged above, from at least four (4) years prior to the
21 filing of this action continuing to the present, Defendant has failed to pay all wages due at the
22 time of termination or resignation to Plaintiff and the Proposed Class.

23 8. Plaintiff, on behalf of himself and all Proposed Class brings this action pursuant
24 to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1185, 1194, 1194.2, 1197, 1199, 2802; Wage
25 Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
26 wages and/or overtime, meal break premiums, rest break premiums, penalties for accurate
27 itemized wage statements, reimbursement of expenses, wages upon termination or resignation,
28 other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

9. Plaintiff, on behalf of himself and all Proposed Class, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

10. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802.

II

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

12. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of San Diego and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class within the State of California and the County of San Diego.

14. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

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III

PARTIES

A. PLAINTIFF

15. Plaintiff DOMINIC GUTIERREZ is a resident of California.

16. Plaintiff and the Proposed Class were regularly required to:

a. Work without being paid for all hours worked at the appropriate rate;

b. Work without being provided their meal periods;

c. Work without being provided their rest periods;

d. Work without Defendant maintaining accurate time records showing when the employee begins and ends each work period, meal periods, and total daily hours worked and work without being provided an accurate itemized wage statement that reflects all deductions from payment of wages and accurately report total hours worked, including when the employee begins and ends each work period, meal periods, and total daily hours worked, and the applicable rates of pay by Plaintiff and Proposed Class; and

e. Work without being reimbursed for expenses as a condition of employment.

17. Defendant willfully failed to compensate Plaintiff and all Proposed Class for wages at the termination of their employment with Defendant.

18. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

19. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802.

B. DEFENDANTS

20. Defendant FIRE SPRINKLER SYSTEMS, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 705 East Harrison Suite 200, Corona, CA 92879. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant

1 has done and does business throughout the State of California.

2 21. The true names and capacities, whether individual, corporate, associate, or
3 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
4 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
5 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
6 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
7 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
8 and capacities of the Defendants designated hereinafter as DOES when such identities become
9 known.

10 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
12 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
13 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
14 respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class.

15 IV

16 **FACTUAL BACKGROUND**

17 23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
18 classified as employees by Defendant.

19 24. Upon information and belief, Plaintiff and the Proposed Class are covered by
20 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
21 Code of Regs. § 11040).

22 25. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
23 at the proper rate of compensation. Defendant has had a consistent policy of failing to pay
24 wages and/or overtime to Plaintiff and the Proposed Class for all hours worked. Defendant
25 required Plaintiff and the Proposed Class to travel to and from the home office to pick up and
26 drop off supplies and to turn in time sheets without the proper compensation. Defendant also
27 failed to compensate Plaintiff and the Proposed Class for their drive time beyond their normal
28 commute to and from the home office. Travel time longer than the employee's normal

1 commute to and from his or her home office is considered compensable. Defendant failed to
2 compensate Plaintiff and the Proposed Class for travel time in excess for the time normally
3 required to report to their home office. As a result, Plaintiff and the Proposed Class were not
4 properly paid for these work tasks as a condition of employment. Defendant's policies and
5 procedures resulted in the underpayment of minimum wages and/or overtime.

6 26. Plaintiff and the Proposed Class have been forced by Defendant to work over
7 five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
8 and not being compensated one (1) hour of pay at the regular rate of compensation for each
9 workday that a meal period was not provided or provided after five (5) hours, all in violation of
10 California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Also,
11 Plaintiff and the Proposed Class Members have been forced by Defendant to work more than ten
12 (10) hours per day without being provided a second meal period of not less than thirty (30)
13 minutes. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
14 to take meal periods by way of a lawful policy.

15 27. Plaintiff and the Proposed Class have been required to work four-hour
16 increments (or major fractions thereof) without being provided with a ten (10) minute rest
17 period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
18 to take rest periods by way of a lawful policy.

19 28. Defendant has failed to provide accurate itemized wage statements in compliance
20 with Labor Code § 226(a) by failing to maintain time records showing when the employee
21 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
22 statements all deductions from payment of wages, accurately reporting total hours worked, the
23 number of piece-rate units earned and the applicable piece rate, and applicable rates of pay for
24 Plaintiff and Proposed Class Members.

25 29. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
26 properly reimbursed expenses associated with the cost and maintenance of their personal
27 vehicles, tools, and cell phones necessary to perform their job duties as a condition of
28 employment.

30. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class Members quit or were discharged. Defendant failed to pay the wages described above at the time of termination or resignation. This failure was willful, without legal justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

31. As a result of the facts alleged above, Defendant has engaged in unfair competition and unlawful business practices.

32. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et seq.*

V

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee by FIRE SPRINKLER SYSTEMS, INC. in the State of California since four (4) years prior to the filing of this action to the present.

34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

35. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Class is easily ascertainable.

A. Numerosity

36. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed 50 to 99 members of the Proposed Class at any given time.

1 37. Plaintiff alleges that Defendant's employment records would provide information
2 as to the number and location of all Proposed Class Members. Joinder of all members of the
3 Proposed Class is not practicable.

4 **B. Commonality**

5 38. There are questions of law and fact common to the Proposed Class that
6 predominate over any questions affecting only individual Proposed Class Members. These
7 common questions of law and fact include, without limitation:

8 a. Whether Defendant failed to pay minimum wages and/or overtime to
9 Plaintiff and the Proposed Class as required by the Labor Code and Wage Orders under Labor
10 Code §§ 510, 1185, 1194, 1194.2, 1197, and 1199;

11 b. Whether Defendant failed to provide all lawful meal periods or pay one
12 hour of wages in lieu thereof statements to Plaintiff and Proposed Class Members;

13 c. Whether Defendant failed to provide all lawful rest periods or pay one
14 hour of wages in lieu thereof statements to Plaintiff and Proposed Class Members;

15 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-
16 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
17 failing to issue accurate and complete itemized wage statements;

18 e. Whether Defendant violated Labor Code § 2802 and/or Wage Order 4-
19 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for
20 the cost and maintenance of their personal vehicles, tools, and cell phones necessary to perform
21 their job duties;

22 f. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
23 pay compensation due and owing at the time that any Proposed Class Member's employment
24 with Defendant terminated;

25 g. Whether Defendant violated § 17200, *et seq.* of the Business &
26 Professions Code by engaging in the acts previously alleged;

27 h. Whether Plaintiff and the members of the Proposed Class are entitled to
28 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

1 i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in
2 the acts alleged herein.

3 **C. Typicality**

4 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff
5 and all members of the Proposed Class sustained injuries and damages arising out of and caused
6 by Defendant's common course of conduct in violation of laws, regulations that have the force
7 and effect of law, and statutes as alleged herein.

8 **D. Adequacy of Representation**

9 40. Plaintiff will fairly and adequately represent and protect the interests of the
10 members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are
11 competent and experienced in litigating large employment class actions.

12 **E. Superiority of Class Action**

13 41. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
15 practicable, and questions of law and fact common to the Proposed Class predominate over any
16 questions affecting only individual members of the Proposed Class. Each member of the
17 Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal
18 policy and/or practice of failing to pay wages for all hours worked, failing to provide meal
19 periods, failing to provide rest periods, failing to provide accurate itemized wage statements,
20 failing to provide reimbursement of expenses, and failing to pay all wages upon resignation or
21 termination.

22 42. Class action treatment will allow those similarly situated persons to litigate their
23 claims in the manner that is most efficient and economical for the parties and the judicial
24 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
25 management of this action that would preclude its maintenance as a class action.

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1 VI

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES/OVERTIME**

4 **VIOLATION OF LABOR CODE §§ 510, 1194, AND 1199**

5 43. Plaintiff incorporates each and every allegation set forth in all of the foregoing
6 paragraphs as if fully set forth herein.

7 44. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
8 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
9 one workweek must be compensated at the rate of no less than one and one-half times the
10 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay
11 its employees the legal minimum wage and the legal overtime compensation applicable.
12 California law also requires that any compensation, including a health and welfare fringe
13 benefits, must be included in the regular rate of pay.

14 45. Defendant has had a consistent policy of failing to pay wages and/or overtime to
15 Plaintiff and the Proposed Class for all hours worked. Defendant required Plaintiff and the
16 Proposed Class to travel to and from the home office to pick up and drop off supplies and to turn
17 in time sheets without the proper compensation. Defendant also failed to compensate Plaintiff
18 and the Proposed Class for their drive time beyond their normal commute to and from the home
19 office. Travel time longer than the employee's normal commute to and from his or her home
20 office is considered compensable. Defendant failed to compensate Plaintiff and the Proposed
21 Class for travel time in excess for the time normally required to report to their home office. As
22 a result, Plaintiff and the Proposed Class were not properly paid for these work tasks as a
23 condition of employment. This resulted in underpayment of wages and/or overtime.
24 Defendant's policies and procedures resulted in the underpayment of wages and/or overtime.

25 46. Plaintiff and the Proposed Class were forced to work on a regular and consistent
26 basis without receiving compensation for all hours worked at the proper rate. Specifically,
27 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were
28 working more than eight (8) hours in one day or forty (40) hours in one week.

47. By their policy of requiring Plaintiff and the Proposed Class to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

48. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of wages and overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

VII

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE

49. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

50. Defendant failed to pay minimum wage “for all hours worked.” Defendant required Plaintiff and the Proposed Class to travel to and from the home office to pick up and drop off supplies and to turn in time sheets without the proper compensation. Defendant also failed to compensate Plaintiff and the Proposed Class for their drive time beyond their normal commute to and from the home office. As a result, Plaintiff and the Proposed Class were not properly paid for these work tasks as a condition of employment. Defendant’s policies and procedures resulted in the underpayment of minimum wages.

51. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:

“The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

52. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Plaintiff and the Proposed Class are therefore entitled to double the minimum wage during the relevant period.

53. The minimum wage provisions of California Labor Code are enforceable by

1 private civil action pursuant to California Labor Code §1194(a) which states:

2 “Notwithstanding any agreement to work for a lesser wage, any
3 employee receiving less than the legal minimum wage or the legal
4 overtime compensation applicable to the employee is entitled to
5 recover in a civil action the unpaid balance of the full amount of
6 this minimum wage or overtime compensation, including interest
7 thereon, reasonable attorney’s fees and costs of suit.”

8 54. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
9 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

10 55. California Labor Code §1194.2 also provides for the following remedies:

11 “In any action under Section 1194 . . . to recover wages because of
12 the payment of a wage less than the minimum wages fixed by an
13 order of the commission, an employee shall be entitled to recover
14 liquidated damages in an amount equal to the wages unlawfully
15 unpaid and interest thereon.”

16 56. Defendant has the ability to pay minimum wages for all time worked and have
17 willfully refused to pay such wages with the intent to secure for Defendant a discount upon this
18 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and the
19 Proposed Class.

20 57. Wherefore, Plaintiff and the Proposed Class are entitled to recover the unpaid
21 minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully
22 unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to Labor Code
23 § 1194(a).

24 VIII

25 THIRD CAUSE OF ACTION

26 FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7

27 AND LABOR CODE § 512

28 58. Plaintiff incorporates each and every allegation set forth in all of the foregoing
paragraphs as if fully set forth herein.

59. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
compensation for each meal period the employer fails to provide. Employees are entitled to a

1 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided
2 within the first five (5) hours of the shift. Additionally, an employer may not employ an
3 employee for a work period of more than ten (10) hours per day without providing the employee
4 with a second meal period of not less than thirty (30) minutes. Defendant failed to maintain a
5 policy informing Plaintiff and the Proposed Class of these rights.

6 60. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

7 61. Defendant failed to provide Plaintiff and the Proposed Class with proper meal
8 periods of not less than thirty (30) minutes as required by the Labor Code during the relevant
9 time period. When Defendant provided these meal periods, they were often less than thirty (30)
10 minutes in length.

11 62. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
12 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum
13 to be proven at trial.

14 IX

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7**

17 63. Plaintiff incorporates each and every allegation set forth in all of the foregoing
18 paragraphs as if fully set forth herein.

19 64. Labor Code § 226.7 require an employer to pay an additional hour (1) of
20 compensation for each rest period the employer fails to provide. Employees are entitled to a
21 paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).
22 Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

23 65. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or
24 with only some of their required rest breaks, and Defendant failed to maintain an accurate policy
25 advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and
26 the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor
27 Code during the relevant time period.

28 66. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to

1 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
2 proven at trial.

3 X

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226(a)**

6 67. Plaintiff incorporates each and every allegation set forth in all of the foregoing
7 paragraphs as if fully set forth herein.

8 68. California Labor Code § 226(a) requires employers to itemize in wage statements
9 all deductions from payment of wages, the appropriate rates of pay, and to accurately report
10 total hours worked by Plaintiff and the Proposed Class.

11 69. Labor Code § 226(a)(2) requires that the itemized wage statement properly state
12 the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage
13 statements that do not state the total hours worked during the pay period.

14 70. Labor Code § 226(a)(3) requires that the itemized wage state properly state the
15 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
16 piece-rate basis. Plaintiff and the aggrieved employees are issued wage statements that do not
17 include the number of piece-rate units earned and the applicable piece rate.

18 71. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
19 time of each payment of wages, furnish each of his or her employees, an accurate itemized
20 statement in writing showing all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the
22 Proposed Class are issued wage statements that do not include all applicable hourly rates in
23 effect during the pay period and the corresponding number of hours worked at each hourly rate
24 by the employee.

25 72. Defendant's failure to provide accurate itemized wages statements according to
26 Labor Code § 226(a) was all done on a regular and consistent basis.

27 73. An employee suffering injury as a result of a knowing and intentional failure by
28 an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual

1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
3 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
4 costs and reasonable attorney's fees.

5 **XI**

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802**

8 74. Plaintiff incorporates each and every allegation set forth in all of the foregoing
9 paragraphs as if fully set forth herein.

10 75. Labor Code § 2802 requires employers to indemnify employees for all necessary
11 expenditures incurred by employees in the discharge of their duties.

12 76. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost and
13 maintenance of their personal vehicles, tools, and cell phones necessary to perform their job
14 duties during the relevant time period.

15 77. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
16 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled
17 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

18 **XII**

19 **SEVENTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

21 78. Plaintiff incorporates each and every allegation set forth in all of the foregoing
22 paragraphs as if fully set forth herein.

23 79. Numerous members of the Proposed Class including the Plaintiff are no longer
24 employed by Defendant. They were either fired or quit Defendant's employ.

25 80. Defendant's failure to pay wages, as alleged above was willful in that Defendant
26 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
27 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
28 penalty until paid for a period of up to thirty (30) days from the time they were due.

81. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class Members' daily wage multiplied by thirty (30) days.

XIII

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200

82. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

83. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

84. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

85. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business practices.

86. California's wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply

1 with minimum labor standards.

2 87. Defendant has violated statutes and public policies as alleged herein. Through
3 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
4 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
5 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
6 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
7 privileges guaranteed to all employees under law.

8 88. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
9 violation of § 17200, *et seq.* of the Business & Professions Code.

10 89. Defendant, by engaging in the conduct herein alleged, either knew or in the
11 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
12 violation of § 17200, *et seq.* of the Business & Professions Code.

13 90. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
14 others similarly situated have been damaged in a sum as may be proven.

15 91. Unless restrained, Defendant will continue to engage in the unlawful conduct as
16 alleged above. Pursuant to the Business & Professions Code, this court should make such
17 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
18 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
19 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
20 restitution and disgorgement of profits which may be necessary to restore Plaintiff and the
21 Proposed Class the money Defendant has unlawfully failed to pay.

22 **XIV**

23 **NINTH CAUSE OF ACTION**

24 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

25 92. Plaintiff incorporates each and every allegation set forth in all of the foregoing
26 paragraphs as if fully set forth herein.

27 93. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
28 § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 226(a), 226.7, 510, 512,

1194, 1199, and 2802, which call for civil penalties.

94. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

95. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

96. On March 23, 2020, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant (“Notice Letter”, see Exhibit “1”) and paid the filing fee. Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the address listed on the California Secretary of State’s website as the entity address for FIRE SPRINKLER SYSTEMS, INC., which is 705 East Harrison Suite 200, Corona, CA 92879. (See Exhibit “2”).

97. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of March 23, 2020. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action as may be proven;

3. For compensatory damages in the amount of Plaintiff’s and each Proposed Class Members’ hourly wage for each meal period missed or taken late from at least four (4) years

1 prior to the filing of this action to the present as may be proven;

2 4. For compensatory damages in the amount of Plaintiff's and each Proposed Class
3 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
4 to the filing of this action to the present as may be proven;

5 5. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
6 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
7 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
8 exceeding an aggregate penalty of four thousand dollars (\$4,000);

9 6. For compensatory damages in the amount of Plaintiff's and each Proposed Class
10 Members' out of pocket expenses as a requirement of employment;

11 7. For penalties pursuant to Labor Code § 203 for all employees who were
12 terminated or resigned equal to their daily wage times thirty (30) days;

13 8. An award of prejudgment and post judgment interest;

14 9. An order enjoining Defendant and its agents, servants, and employees, and all
15 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
16 with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage
17 statements, reimbursement of expenses, and wages upon termination/resignation pursuant to
18 Labor Code §§ 203, 226(a), 226.7, 510, 512, 1185, 1194, 1194.2, 1197, 1199, 2802, and IWC 4-
19 2001;

20 10. For restitution for unfair competition pursuant to Business & Professions Code
21 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

22 11. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

23 12. An award providing for payment of costs of suit;

24 13. An award of attorney's fees; and

25 14. Such other and further relief as this Court may deem proper and just.

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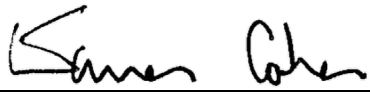
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: May 28, 2020

KINGSLEY & KINGSLEY, APC

By: 

DARREN M. COHEN
Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

Doug Menendez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Monday, March 23, 2020 3:43 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

3/23/2020

LWDA Case No. LWDA-CM-779760-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Dominic Gutiereez
Employer: Fire Sprinkler Systems, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 2



March 23, 2020

PAGAFilings@dir.ca.gov
<https://dir.tfaforms.net/266>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

FIRE SPRINKLER SYSTEMS, INC.
705 East Harrison Suite 200
Corona, CA 92879
Certified Mailing: # 7019 2280 0001 9316 0210

Re: DOMINIC GUTIERREZ V. FIRE SPRINKLER SYSTEMS, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Dominic Gutierrez (“Plaintiff”) for the violations of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Fire Sprinkler Systems, Inc. (“Defendant”) engaged in with respect to our client and all of their California employees.

Specifically, Defendant has violated Labor Code §§ 510, 1194 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. Defendant required Plaintiff and the aggrieved employees to travel to and from the home office to pick up and drop off supplies and to turn in time sheets without the proper compensation. Defendant also failed to compensate Plaintiff and the aggrieved employees for their drive time beyond their normal commute to and from the home office. Travel time longer than the employee’s normal commute to and from his or her home office is considered compensable. Defendant failed to compensate Plaintiff and the aggrieved employees for travel time in excess for the time normally required to report to their home office. As a result, Plaintiff and the aggrieved were not properly paid for these work tasks as a condition of employment. This resulted in

underpayment of wages and/or overtime. As such, Plaintiff and the aggrieved employees were not paid for all hours worked at the proper rate.

Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. In addition, as explained above, as a result of Defendant's common policy of paying Plaintiff and the aggrieved employees by the "piece," Plaintiff and the aggrieved employees were not compensated for their rest periods. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Specifically, Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Labor Code § 226(a)(3) requires that the itemized wage state properly state the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. Plaintiff and the aggrieved employees are issued wage statements that do not include the number of piece-rate units earned and the applicable piece rate. Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued

wage statements that do not include the applicable regular rate, overtime rate, and double time rates. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Plaintiff is aggrieved employees within the meaning PAGA and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

In addition, Labor Code § 2802 and Wage Order 4-2001 require employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to properly reimburse Plaintiff and aggrieved employees the cost of using and maintaining their own personal vehicles, tools, and personal cell phones. These expenses were incurred as a necessary part of the performance of Plaintiff's and the aggrieved employees' job duties. As such, Defendant violated Labor Code § 2802.

Lastly, Defendant failed to pay Plaintiff and the aggrieved employees all wages at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

Defendant's failure to provide wages and/or overtime, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, failure to reimburse expenses, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/dm

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/266>
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
FIRE SPRINKLER SYSTEMS, INC. # 7019 2280 0001 9316 0210