

FILED

Superior Court of California
County of Riverside

6/1/2020

C. Mundo

Electronically Filed

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Lirit A. King, Esq. (SBN 252521)
31365 Oak Crest Drive, Suite 240
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589
E-Mail: mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
lking@bradleygrombacher.com

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian, II, Esq. (SBN 146621)
18250 Ventura Boulevard
Tarzana, California 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892
E-Mail: sahagii@aol.com

Attorneys for Plaintiff, DANIEL GONZALEZ, individually
and on behalf of other individuals similarly situated

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

DANIEL GONZALEZ, individually and on
behalf of other individuals similarly situated,

Plaintiff,

v.

CR&R INC., a California corporation, and
DOES 1-100 inclusive,

Defendants.

CASE NO. RIC2001229

**CLASS ACTION FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Pay all Wages in Violation of California *Labor Code* §§ 1194, 1194.2, 1197, 1197.1;
2. Failure to Pay All Overtime in Violation of California *Labor Code* §§ 510, 1194;
3. Failure to Pay all Wages at Termination in Violation of California *Labor Code* §§ 201-203;
4. Failure to Furnish an Accurate Itemized Wage Statement upon Payment of Wages in Violation of California *Labor Code* § 226;
5. Violations of California *Business & Professions Code* §§ 17200, *et seq.*;
6. Penalties Pursuant to California Labor Code §§ 2698-2699, *et. seq.* for violations of Labor Code §§ 201, 202, 203, 226, 510, , 1194, and 1197

DEMAND FOR JURY TRIAL

1 Plaintiff DANIEL GONZALEZ, (hereinafter referred to as “Plaintiff”), hereby submits his
2 Class Action First Amended Complaint (“Complaint”) against Defendants CR&R INC., a California
3 corporation and DOES 1-100 (hereinafter collectively referred to as “Defendants”) on behalf of
4 himself and the class of all other similarly situated current and former employees of Defendants.
5 Plaintiff brings this action upon information and belief, except as to his own actions, the
6 investigation of his counsel, and the facts that are a matter of public record, as follows:

7 **INTRODUCTORY FACTUAL ALLEGATIONS**

8 1. This is a class action challenging systemic illegal employment practices resulting in
9 violations of the California *Labor Code* §§ 201-203, 226, 1194, 1194.2, 1197, 1197.1, and
10 California *Business and Professions Code* against employees of Defendant.

11 2. This is an enforcement action under the Labor Code Private Attorneys General Act of
12 2004, California Labor Code §2698 et seq. (“PAGA”) to recover civil penalties and any other
13 available relief on behalf of Plaintiff, the State of California, and former and current non-exempt
14 employees of Defendant doing business and employing individuals in California.

15 3. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class as a
16 result of employment policies, practices and procedures more specifically described below, which
17 violate the California *Labor Code*, and the orders and standards promulgated by the California
18 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor
19 Standards. Said employment policies, practices and procedures are generally described as follows:

- 20 a. Failure to pay Plaintiff and the members of the Plaintiff Class wages for all hours
21 worked pursuant to California *Labor Code* §1194;
22 b. Failure to pay all wages owed to Plaintiff and members of the Plaintiff Class due
23 to Defendants’ rounding of hours;
24 c. Failure to pay all wages owed to Plaintiff and members of the Plaintiff Class due
25 to Defendants’ failure to correctly calculate overtime;
26 d. Failure to pay Plaintiff and members of the Plaintiff Class all wages owed at
27 termination; and
28

e. Failure to provide Plaintiff and Class Members with accurate itemized wage statements in violation of California *Labor Code* § 226.

4. Plaintiff is informed and believes, and based thereon alleges, that among other things Defendants have engaged in a system of willful violations of the California *Labor Code* and California *Business and Professions Code*, and applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

5. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the structures of the California *Labor Code*, and California *Business and Professions Code*.

6. This matter is brought as a class action pursuant to California *Code of Civil Procedure* §382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically below, but which is comprised, generally, of all former and current employees of Defendants CR&R INC., a California corporation, who hold or held the job positions which Defendants classified as “non-exempt” at any of Defendants’ facilities in California and throughout the United States.

7. This Complaint alleges systematic violations of the California *Labor Code* (hereinafter, “*Labor Code*,”) and the California *Business & Professions Code* and is brought by Plaintiff on his own behalf and on behalf of the members of the Plaintiff Class.

8. The California Plaintiff “Class Period” is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter. Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

9. The actions of Defendants are in violation of the California *Labor Code* as well as the wage orders of the Industrial Wage Commission of the State of California and, as a result, are unlawful and unfair acts, thus constituting a violation of California *Business & Professions Code* § 17200, et seq. (Unfair Practices Act).

10. The policies, practices and customs of Defendants described above and herein have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the requirements of the California *Labor Code* and of the *Business & Professions Code*.

JURISDICTION AND VENUE

11. On information and belief, Defendants are either a citizen of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

12. Venue is proper in Los Angeles County because the acts which gave rise to this litigation occurred in this county and Defendants do business in Los Angeles County.

THE PARTIES

13. Plaintiff DANIEL GONZALEZ (“Plaintiff”) is a resident of Riverside County, in the State of California. Plaintiff was employed by Defendants in Perris, California for approximately fourteen (14) years until his termination on December 15, 2019. Plaintiff was a ‘Driver’ for the Defendant.

14. Defendant CR&R INC., is a California corporation that conducts business in California, and processes, collects and recycles materials.

15. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes, and

1 based thereon alleges, that each of said fictitious Defendants were responsible in some way for the
2 matters alleged herein and proximately caused Plaintiff and members of the general public and class
3 to be subject to the illegal employment practices, wrongs and injuries complained of herein.

4 16. At all times herein mentioned, Defendants participated in the wrongdoing of the acts
5 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
6 and each of them, were the agents, servants and employees of each of the other Defendants, as well
7 as the agents of all Defendants, and at all times herein mentioned, were acting within the course and
8 scope of said agency and employment.

9 17. Plaintiff is informed and believes, and based thereon alleges, that at all times material
10 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
11 venture of, or working in concert with each of the other co-Defendants and were acting within the
12 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
13 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
14 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15 18. At all times herein mentioned, Defendants, and each of them, were members of, and
16 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
17 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18 19. At all times herein mentioned, the acts and omissions of various Defendants, and
19 each of them, concurred and contributed to the various acts and omissions of each and all of the
20 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
21 herein mentioned, Defendants, and each of them, ratified each and every act or omission complained
22 of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
23 acts and omissions of each and all of the other Defendants in proximately causing the damages as
24 herein alleged.

25 20. The members of the Plaintiff Class, including the representative Plaintiff named
26 herein, have been employed during the Class Period in California. The practices and policies which
27 are complained of by way of this Complaint are enforced throughout the State of California and the
28 United States.

FACTUAL ALLEGATIONS

21. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

22. Plaintiff and all other members of the Plaintiff Class were and are classified by Defendants as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders and standards promulgated by the California Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees, Plaintiff and all other members of the Plaintiff Class are entitled to certain benefits. In addition, said statutory provisions, wage orders, regulations and standards obligate the employer to maintain accurate records of the hours worked by employees.

23. Plaintiff and the members of the Plaintiff Class seek compensation from Defendants for the relevant time period because Defendants:

- a. Failed to pay wages for all hours worked by Plaintiff and the members of the Plaintiff Class due to consistent rounding (California *Labor Code* §1194);
- b. Failed to pay Plaintiff and the member of the Plaintiff Class all overtime wages owed due to consistent miscalculations (California *Labor Code* §§ 510, 1194);
- c. Failed to pay all wages owed at termination (California *Labor Code* §§ 201-203); and
- d. Failed to provide Plaintiff and the members of the Plaintiff Class with accurate itemized wage statements (California *Labor Code* §226).

24. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

25. Defendants' utilization of such unfair business practices deprives Plaintiff and Plaintiff Class members of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

26. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiff's
2 respective damage in amounts according to proof at the time of trial.

3 ***Defendant's Failure to Pay All Wages***

4 27. Defendants did not compensate their hourly non-exempt employees for all the
5 minutes that they worked as described above, including but not limited to the time that the
6 employees were subject to the control and direction of Defendants; and/or the time that the
7 employees were suffered or permitted to work.

8 28. Defendants rounded Plaintiff's and members of the Plaintiff Class' time to their
9 detriment. Defendants use a timekeeping software to record its employee work hours. Employees
10 are required to clock into the system at the beginning and end of their shifts, as well as for meal
11 breaks. The system shows the actual time (to the minute) when the employee punched into the
12 system. During the relevant times, Defendants calculated an employee's pay based on his or her
13 "clock in" and "clock out" times subject to a rounding policy where hours are rounded up or down
14 to the nearest quarter of an hour. E.g. if an employee punches in at 2:57, it would round up to 3:00
15 and if an employee punched out at 7:27, it would round down to 7:25.

16 29. Defendants' routine policy of rounding all hours deprived Plaintiff and other
17 Plaintiff Class Members of the compensation they should have received for all actual hours worked.

18 30. Plaintiff alleges that he had uneven and non-rounded punches, but end results are the
19 time being rounded by Defendants. As a result, Defendants have failed and refused to compensate
20 Plaintiff and members of the Plaintiff Class all wages due to them for actual hours worked, and are
21 in violation of California *Labor Code* § 1194. Defendant owes each of their hourly employees for
22 the unpaid time each day.

23 ***Defendant's Failure to Pay All Overtime***

24 31. During the Class Period, in violation of the applicable sections of the California
25 *Labor Code* and the requirements of the Industrial Welfare Commission ("IWC") Wage Order,
26 Defendants, as a matter of company policy, practice and procedure, intentionally, knowingly, and
27 systematically failed and continues to fail to correctly calculate and pay Plaintiff and other members
28 of the Plaintiff Class for all overtime worked. State law provides that employees must be

1 paid overtime at one-and-one-half (1 1/2) times their “regular rate of pay.”

2 32. Plaintiff alleges that he was not properly paid all overtime wages owed in compliance
3 with California labor laws.

4 33. Specifically, Defendants miscalculated the overtime wages owed on each of the
5 Plaintiff’s wage statements. By way of example, during the pay period of 03/03/2019-03/09/2019,
6 Plaintiff’s overtime rate was 35.33 and he worked 19.00 hours. Thus, Plaintiff is entitled to \$671.27.
7 However, Defendant only paid Plaintiff \$671.18. Thus, Defendants shorted Plaintiff \$0.09.

8 34. This miscalculation can be seen on each of the Plaintiff’s wage statements in which
9 overtime was earned.

10 35. As a result, Defendants have failed and refused to compensate Plaintiff and members
11 of the Plaintiff Class all wages due to them for actual hours worked, and are in violation of
12 California *Labor Code* § 1194. Defendant owes each of their hourly employees for the unpaid
13 overtime each day.

14 ***Defendants’ Failure to Pay all Wages Due at Termination of Employment***

15 36. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
16 discharges an employee to pay compensation due and owing to said employee immediately upon
17 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
18 compensation due and owing to said employee within seventy-two (72) hours of an employee’s
19 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
20 compensation promptly upon discharge or resignation, as required under §§ 201 and 202, then the
21 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
22 (30) work days.

23 37. Defendants failed to pay all wages owed to Plaintiff and the Plaintiff Class, because
24 Defendants rounded all hours worked and miscalculated all overtime worked. Thus, Defendants
25 failed to compensate Plaintiff and other Class members all wages owed upon termination.

26 ***Defendant’s Failure to Provide Accurate Wage Statements***

27 38. Defendants failed to comply with California *Labor Code* §226(a) because the hours
28 worked and overtime calculations were incorrect as a result of the uniform, routine and systemic

violations described above resulting in a violation of California *Labor Code* § 226(a).

Facts Regarding Willfulness

39. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and were advised by skilled lawyers, other professionals, employees with human resources background and advisors with knowledge of the requirements of California wage and hour laws.

40. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times, Defendants had a consistent policy or practice of failing to compensate the Plaintiff Class members, including Plaintiff.

41. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that the Plaintiff Class members, including Plaintiff, were and are entitled to accurate wages, and to be compensated for all hours worked and for time spent under the control of the Defendants.

Plaintiff's Exhaustion of Administrative Remedies

42. Plaintiff has complied with the procedures for bringing suit specified in California *Labor Code* § 2699.3.

43. By letter dated March 17, 2020, required notice was provided to Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California *Labor Code* alleged to have been violated, including the facts and theories to support the alleged violations.

44. More than sixty-five (65) days have passed since the date the notice was mailed to Defendants and the LWDA and Plaintiff has received no response.

Unfair Business Practices

45. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

46. Defendants' utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over Defendants' competitors.

47. Defendants' utilization of such unfair business practices deprives Plaintiff and Plaintiff Class Members of the general minimum working standards and entitlements due them under California law and the Industrial Welfare Commission wage orders as described herein.

48. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage in amounts according to proof at the time of trial.

CLASS ACTION ALLEGATIONS

49. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

50. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to California *Code of Civil Procedure* §382. The classes which Plaintiff seeks to represent are composed of, and defined as follows:

Plaintiff Class

All persons who have been, or currently are, employed by Defendants and who held, or hold, job positions which Defendants have classified as “non-exempt” employees in the State of California. (The Class Period is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter). The term “non-exempt employee” refers to those who Defendants have classified as non-exempt from the overtime wage provisions of the California *Labor Code*.

Terminated Sub Class

All members of the Plaintiff Class whose employment ended during the Class Period. (The Class Period is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter).

(collectively “Plaintiff Class” or “Class Members”)

1 51. The Plaintiff Class and Terminated Sub Class are so numerous that the individual
2 joinder of all members is impracticable. While the exact number and identification of the Plaintiff
3 Class and Terminated Sub Class are unknown to Plaintiff at this time and can only be ascertained
4 through appropriate discovery directed to Defendant, Plaintiff is informed and believes that the class
5 includes potentially hundreds of members.

6 52. Common questions of law and fact exist as to all Class Members, and predominate
7 over any questions affecting solely individual members of the class. Among the questions of law
8 and fact, that are relevant to the adjudication of class members claims are as follows:

- 9 a. Whether Plaintiff and members of the Plaintiff Class are subject to and entitled
10 to the benefits of California wage and hour statutes;
- 11 b. Whether Defendants' policies resulted in a failure to pay all wages;
- 12 c. Whether Defendants maintained accurate records of the hours worked by
13 members of the Class in violation of California *Labor Code* §1174;
- 14 d. Whether Defendants failed pay Plaintiff and members of the Plaintiff Class for
15 all hours worked;
- 16 e. Whether Defendant failed to correctly calculate all overtime owed to Plaintiff
17 and members of the Plaintiff Class;
- 18 f. Whether Defendant failed to timely pay all wages owed to Plaintiff and
19 members of the Terminated Sub-Class upon termination;
- 20 g. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if
21 so, the proper measure of such damages, as well as interest, penalties, costs,
22 attorneys' fees, and equitable relief;
- 23 h. Whether the members of the Terminated Sub-Class, that are no longer
24 employed by the Defendants are entitled to penalties pursuant to California
25 *Labor Code* §203;
- 26 i. Whether Defendant failed to provide compliant wage statements; and
- 27 j. Whether Defendant's conduct as alleged herein violates the Unfair Business
28 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

1 53. The claims of the named Plaintiff are typical of the claims of the members of the
2 Plaintiff Class and Terminated Sub Class. Plaintiff and Class Members sustained losses, injuries
3 and damages arising from Defendants' common policies, practices, procedures, protocols, routines,
4 and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery
5 for the same type of losses, injuries, and damages as were suffered by other members of the
6 proposed class.

7 54. Plaintiff is an adequate representative of the proposed classes because he is a member
8 of the class, and his interests do not conflict with the interests of the members he seeks to represent.
9 Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions,
10 and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the
11 classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and
12 his attorneys.

13 55. A class action is superior to other available methods for the fair and efficient
14 adjudication of this litigation since individual litigation of the claims of all Class Members is
15 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
16 individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits.
17 Further, individual litigation presents the potential for inconsistent or contradictory judgments, and
18 the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those
19 with equally meritorious claims. By contrast, the class action device presents far fewer management
20 difficulties, and provides the benefit of a single adjudication, economics of scale, and
21 comprehensive supervision by a single court.

22 56. The various claims asserted in this action are additionally or alternatively certifiable
23 under the provisions of the California *Code of Civil Procedure* § 382 because:

- 24 a. The prosecution of separate actions by hundreds of individual class members
25 would create a risk of varying adjudications with respect to individual class
26 members, thus establishing incompatible standards of conduct for Defendants;
27 and
28 b. The prosecution of separate actions by individual class members would also

1 create the risk of adjudications with respect to them that, as a practical matter,
2 would be dispositive of the interest of the other class members who are not a
3 party to such adjudications and would substantially impair or impede the ability
4 of such non-party class members to protect their interests.

5 57. Plaintiff hereby incorporates each and every allegation contained above and realleges
6 said allegations as if fully set forth herein.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES**

9 **(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)**

10 58. Plaintiff incorporates herein by reference the allegations set forth above.

11 59. At all times relevant herein, which comprise the time period not less than four (4) years
12 preceding the filing of this action, Defendants were required to compensate their hourly employees for
13 all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the
14 Industrial Welfare Commission Orders and California *Labor Code* §§ 200, 226, 1197, and 1198.

15 60. For at least the four (4) years preceding the filing of this action, Defendants failed to
16 compensate employees for all hours worked. Defendants implemented policies that actively prevented
17 employees from being compensated for all time worked by rounding hours worked to the nearest quarter
18 of an hour.

19 61. Plaintiff alleges that he had uneven and non-rounded punches, but end results are the
20 time being rounded by Defendants. As a result, Defendants have failed and refused to compensate
21 Plaintiff and members of the Plaintiff Class all wages due to them for actual hours worked, and are in
22 violation of California *Labor Code* § 1194. Defendants owe each of their hourly employees for the
23 unpaid time each day

24 62. Under the above-mentioned wage order and state regulations, Plaintiff and the Plaintiff
25 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
26 preceding the filing of this action, in addition to reasonable attorneys' fees and costs of suit in
27 accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code* §203
28 and 206.

63. Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Plaintiff Class for all wages earned and all hours worked, in violation of state law. As a direct result, Plaintiff and the Plaintiff Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation under state law, in accordance with Plaintiff's and the Plaintiff Class' respective damage amounts according to proof at time of trial.

64. Defendants committed such actions knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff's and the Plaintiff Class' rights.

65. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

66. As a proximate result of the above-mentioned violations Plaintiff and the Plaintiff Class have been damaged in an amount according to proof at time of trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME

IN VIOLATION OF CAL. LABOR CODE §§ 510, 1194

(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)

67. Plaintiff incorporates herein by reference the allegations set forth above

68. Plaintiff and other members of the Plaintiff Class bring a claim for Defendants' willful and intentional violations of the California *Labor Code* and the Industrial Welfare Commission requirements for Defendants' failure to accurately calculate the applicable rates for all overtime worked by Plaintiff and other members of the Plaintiff Class and Defendants' failure to properly compensate Plaintiff and members of the Plaintiff Class for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

69. Pursuant to California *Labor Code* § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

1 70. California *Labor Code* § 510 further provides that employees in California shall not
2 be employed more than eight (8) hours per workday and more than forty (40) hours per workweek
3 unless they receive additional compensation beyond their regular wages in amounts specified by
4 law.

5 71. California *Labor Code* § 1194 establishes an employee's right to recover unpaid
6 wages, including overtime compensation and interest thereon, together with the costs of suit.
7 California *Labor Code* § 1198 further states that the employment of an employee for longer hours
8 than those fixed by the Industrial Welfare Commission is unlawful.

9 72. Defendant maintained a uniform wage practice of paying Plaintiff and the other
10 members of the Plaintiff Class without regard to the correct applicable calculation of the gross
11 overtime wages for the number of overtime hours worked. As set forth herein, Defendants' uniform
12 policy and practice is to unlawfully and intentionally deny timely payment of wages due for the
13 overtime worked by Plaintiff and the other members of the Plaintiff Class, and Defendants in fact
14 fail to pay these employees the correct applicable overtime wages for all overtime worked.

15 73. By way of example, Defendants miscalculated the overtime wages owed on each of
16 the Plaintiff's wage statements. For example, during the pay period of 03/03/2019-03/09/2019,
17 Plaintiff's overtime rate was 35.33 and he worked 19.00 hours. Thus, Plaintiff is entitled to \$671.27.
18 However, Defendant only paid Plaintiff \$671.18, and thus, shorted Plaintiff 0.09 cents.

19 74. This miscalculation can be seen one each of the Plaintiff's wage statements in which
20 overtime was earned.

21 75. Defendants' uniform pattern of unlawful wage and hour practices manifested, without
22 limitation, applicable to the Plaintiff Class as a whole, as a result of implementing a uniform policy
23 and practice that denies accurate compensation to Plaintiff and the other members of the Plaintiff
24 Class for all overtime worked, including, the work performed in excess of eight (8) hours in a
25 workday and/or forty (40) hours in any workweek.

26 76. In committing these violations of the California *Labor Code*, Defendants inaccurately
27 calculates the gross wages earned from overtime, and consequently underpays the actual time
28 worked by Plaintiff and other members of the Plaintiff Class. Defendants acts in an illegal attempt to

1 avoid the payment of all earned wages, and other benefits in violation of the California *Labor Code*,
2 the Industrial Welfare Commission requirements and other applicable laws and regulations.

3 77. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff
4 and the other members of the Plaintiff Class do not receive full compensation for all overtime
5 worked.

6 78. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
7 to Plaintiff and the other members of the Plaintiff Class for the true time they worked, Plaintiff and
8 the other members of the Plaintiff Class have suffered and will continue to suffer an economic injury
9 in amounts which are presently unknown to them and which will be ascertained according to proof
10 at trial.

11 79. Plaintiff and the other members of the Plaintiff Class therefore request recovery of all
12 unpaid overtime wages, according to proof, interest, statutory costs, as well as the assessment of any
13 statutory penalties against Defendants, in a sum as provided by the California *Labor Code* and/or
14 other applicable statutes.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES AT TIME OF TERMINATION**

17 **IN VIOLATION OF CAL. LABOR CODE §§201-203**

18 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

19 80. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
20 herein.

21 81. At all times, relevant herein, Defendants were required to pay its employees all wages
22 owed in a timely fashion during and at the end of their employment, pursuant to California *Labor*
23 *Code* §§ 201-203.

24 82. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
25 members of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-
26 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

27 83. These payments should include worked hours that were not accounted for due to the
28 Defendants' policies of rounding and by failing to correctly calculate overtime compensation while

1 still under and subject to the control of the Defendants.

2 84. The conduct of Defendants and its agents and managerial employees as described
3 herein was willful, and in violation of the rights of Plaintiff and the individual members of the
4 Terminated Sub Class.

5 85. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful
6 failure to pay wages due and owing upon separation from employment results in a continued
7 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
8 Class Members who have separated from employment are entitled to compensation pursuant to
9 California *Labor Code* § 203.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN**

12 **VIOLATION OF CALIFORNIA LABOR CODE § 226**

13 **(by Plaintiff and the Members of the Plaintiff Class against Defendant)**

14 86. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
15 herein, the allegations contained above.

16 87. California *Labor Code* § 226(a) sets forth reporting requirements for employers when
17 they pay wages, as follows: "[e]very employer shall ... at the time of each payment of wages, furnish
18 his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned;
19 (2) total hours worked by the employee.... (5) net wages earned ... (8) the name and address of the
20 legal entity that is the employer... (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee." (Emphasis added.)
22 Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure
23 by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
25 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
26 aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and
27 reasonable attorney's fees."
28

88. Defendants failed to correctly indicate the gross wages earned, due to Defendants' systematic policies of rounding all hours worked and by failing to correctly calculate overtime pay.

89. Plaintiff and Class members were damaged by these failures because, among other things, the failures hindered Plaintiff and Class members from determining the amounts of wages actually owed to them.

90. Plaintiff and Class members request recovery of California *Labor Code* § 226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California *Labor Code* § 226(e), in a sum as provided by the Labor Code and/or other statutes.

91. Wherefore, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA

BUSINESS AND PROFESSIONS CODE § 17200, etc.

(By Plaintiff and the Members of the Plaintiff Class, Against All Defendants)

92. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

93. Section 17200 of the California *Business and Professions Code* prohibits any unlawful, unfair or fraudulent business act or practice.

94. Plaintiff brings this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary damages because of Defendants' actions.

95. The actions by Defendants as herein alleged amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business practices in violation of California *Business and Professions* Code § 17200, *et seq.*

96. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the Plaintiff Class by denying them wages due and payable, and by failing to pay all wages due in a timely manner at the time of termination (for the Terminated Sub Class). Defendants' actions are thus substantially injurious to Plaintiff and the members of the Plaintiff Class, causing them injury in

1 fact and loss of money.

2 97. Because of such conduct, Defendants have unlawfully and unfairly obtained monies
3 due to the Plaintiff and the members of the Plaintiff Class.

4 98. All members of the Plaintiff Class can be identified by reference to payroll and
5 related records in the possession of the Defendants. The amount of wages due to Plaintiff and
6 members of the Plaintiff Class can be readily determined from Defendants' records. The Class
7 Members are entitled to restitution of monies due and obtained by Defendant during the Class Period
8 as a result of Defendants' unlawful and unfair conduct.

9 99. During the Class Period, Defendants committed, and continue to commit, acts of
10 unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and
11 among other things, engaging in the acts and practices described above.

12 100. Defendants' course of conduct, acts, and practices in violation of the California law
13 as mentioned in each paragraph above constitutes a separate and independent violation of § 17200,
14 *etc.*, of the *Business and Professions Code* in that it is fraudulent, improper and unfair.

15 101. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully
16 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and
17 practices and therefore, Defendants' actions described herein constitute an unfair business practice
18 or act within the meaning of *Business and Professions Code* § 17200.

19 102. Defendants' conduct described herein threatens an incipient violation of California's
20 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
21 threatens or harms competition.

22 103. Defendants' course of conduct described herein further violates California *Business*
23 *and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

24 104. The unlawful, unfair, and fraudulent business practices and acts of Defendants as
25 described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were
26 wrongfully denied the timely and full payment of wages due to them.

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2698, et seq. (PAGA)**

3 **(Against Defendants on behalf of Plaintiff and All Other Aggrieved Employees)**

4 105. Plaintiff incorporates all preceding paragraphs as though fully set for herein.

5 106. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor
6 Code sections enumerated in California Labor Code §2699.5.

7 107. PAGA provides as follows: “[n]otwithstanding any other provision of law, a Plaintiff
8 may as a matter of right amend an existing complaint to add a cause of action arising under this part
9 at any time within 60 days of the time periods specified in this part.”

10 108. Aggrieved Employees shall mean all employees who were or are employed by
11 Defendant in California as “non-exempt employees” against whom one or more violations of any
12 provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and
13 days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were
14 committed, as set forth in this complaint, at any time between one year prior to the filing of this
15 complaint until judgment. As used in this definition, the term "non-exempt employee" refers to those
16 whom Defendant has classified as non-exempt from the overtime wage provisions of the California
17 Labor Code.

18 109. Defendant’s conduct, as alleged herein, violates numerous sections of the California
19 Labor Code including, but not limited to, the following:

- 20 a. Failure to Pay all Wages in Violation of California Labor Code §§ 1194, 1194.2,
21 1197, 1197.1;
- 22 b. Failure to Pay All Overtime in Violation of California Labor Code §§ 510, 1194;
- 23 c. Failure to Pay all Wages at Termination in Violation of California Labor Code §§
24 201-203; and,
- 25 d. Failure to Furnish an Accurate Itemized Wage Statement upon Payment of Wages in
26 Violation of California Labor Code § 226.

27 ///

28 ///

1 110. California Labor Code § 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
3 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . .
4 standard conditions of labor for employees. The employment of any employee . . . under conditions
5 of labor prohibited by the order is unlawful.”

6 111. California Labor Code §226(a) sets forth reporting requirements for employers when
7 they pay wages, as follows:

8 "Every employer shall . . . at the time of each payment of wages, furnish his or
9 her employees . . . an itemized statement in writing showing (1) gross wages
10 earned; (2) total hours worked by the employee . . . (3) the number of piece-
11 rate units earned and any applicable piece rate if the employee is paid on a
12 piece-rate basis. . . (8) the name and address of the legal entity that is the
13 employer and, if the employer is a farm labor contractor, as defined in
14 subdivision (b) of Section 1682, the name and address of the legal entity that
15 secured the services of the employer."

16 Section (e) provides:

17 "An employee suffering injury as a result of a knowing and intentional failure
18 by an employer to comply with subdivision (a) shall be entitled to recover the
19 greater of all actual damages or fifty dollars (\$50) for the initial pay period in
20 which a violation occurs and one hundred dollars (\$100) per employee for each
21 violation in a subsequent pay period, not exceeding an aggregate penalty of
22 four thousand dollars (\$4000), and shall be entitled to an award of costs and
23 reasonable attorneys' fees."

24 112. Defendants, at all times relevant to this complaint, were employers or persons acting
25 on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights by
26 violating various sections of the California Labor Code as set forth above.

27 113. As set forth above, Defendants have violated numerous provisions of both the Labor
28 Code sections regulating hours and days of work as well as the applicable order of the IWC.

1 Accordingly, Plaintiff seeks the remedies set forth in California Labor Code for themselves, the
2 State of California, and all other aggrieved employees.

3 114. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3, and
4 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and
5 collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the
6 State of California against Defendants, in addition to other remedies, for violations of California
7 Labor Code.

8 115. California Labor Code § 1198 makes it illegal to employ an employee under
9 conditions of labor that are prohibited by the applicable wage order. California Labor Code § 1198
10 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard
11 conditions of labor for employees. The employment of any employee . . . under conditions of labor
12 prohibited by the order is unlawful.”

13 116. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3 and SB 836. By letter dated March 17, 2020, Plaintiff, on behalf of himself
15 and the other aggrieved employees, pursuant to California Labor Code § 2699.3, gave written notice
16 by electronic submission to the Labor and Workforce Development Agency (“LWDA”) and
17 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have
18 been violated, including the facts and theories to support the alleged violations.

19 117. More than sixty-five (65) days have passed since the Notice to the LWDA and no
20 response has been received.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

- 23 1. For an order certifying the proposed Plaintiff, Plaintiff Class and Terminated Sub
24 Class;
25 2. An order that counsel for Plaintiff be appointed class counsel;
26 3. Certification of this class action on behalf of the proposed Plaintiff, Plaintiff Class
27 and Terminated Sub-Class;
28

4. Designation of Plaintiff as the class representative of the Plaintiff, Plaintiff Class and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
6. A declaration that Defendant's practices violate the California *Labor Code* and California *Business & Professions Code*;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to California *Labor Code* §§ 200, 203; 226; 2698-2699;
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226, 1194, and 2699 (g) (1);
12. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 1194 and 2699 (g)(1); and,
13. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law:
 - a. California *Labor Code* §§ 204, 1194, 1194.2, 1197, 1197.1 by failing to pay all wages owed;
 - b. California *Labor Code* §§ 510, 1194 by failing to pay all earned overtime wages;
 - c. California *Labor Code* §§ 201-203 and 227.3 by failing to pay all wages when due and by willfully failing to make timely payment of the full wages due to workers who quit or have been discharged;
 - d. California *Labor Code* § 226, by failing to correctly provide the information required with each payment of wages; and
 - e. California *Business & Professions Code* §§ 17200-08 by violating the provisions set forth herein above; and

1 14. For all such other and further relief that the Court may deem just and proper.

2 DATED: May 28, 2020

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II

3
4 By: 

5 Marcus J. Bradley, Esq.
6 Kiley Lynn Grombacher, Esq.
7 Lirit A. King, Esq.
8 Sahag Majarian, II, Esq.
9 Attorneys for Plaintiff

JURY DEMAND

10 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

11 DATED: May 28, 2020

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II

12
13 By: 

14 Marcus J. Bradley, Esq.
15 Kiley Lynn Grombacher, Esq.
16 Lirit A. King, Esq.
17 Sahag Majarian, II, Esq.
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On May 28, 2020, I served the foregoing documents **FIRST AMENDED CLASS ACTION COMPLAINT** on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

☒ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(VIA FEDERAL EXPRESS)** I caused to have served such document(s) by depositing them in the drop box at Westlake Village, California, for priority overnight next day delivery.

☐ **(VIA FACSIMILE)** I caused such document to be faxed to the persons identified with fax numbers on the attached Mailing List.

☐ **(VIA PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of the addressee.

☒ **(BY E-MAIL)** Per the agreement of the parties, on the above date, I served the aforementioned document(s) by email to the parties' email addresses as they are known to me on the attached service list. My email address is sboucher@bradleygrombacher.com. I did not receive, within a reasonable period of time, any indication that the transmission was not successful.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 28, 2020 at Westlake Village, California.


Suzette Boucher

Gonzalez, et al. v. CR&R Inc., et al.
Riverside County Superior Court
Case No.: RIC2001229

Service List

**ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP**

Attorneys at Law

Melissa K. Bell, Esq.

Dwight Armstrong, Esq.

865 South Figueroa Street, Suite 2800 |

Los Angeles, CA 90017-2543

Telephone: (213) 622-5555

Facsimile: (213) 620-8816

mbell@allenmatkins.com

darmstrong@allenmatkins.com

Attorneys for Defendant
CR&R INC.