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on behalf of themselves and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

**RICARDO GOMEZ and RICARDO
GOMEZ, SR., individually and on behalf of
all others similarly situated,**

Plaintiffs,

vs.

**KLEARY MASONRY, INC., a California
Corporation;
MICHAEL G. KLEARY, an individual;
NICK KLEARY, an individual;
DIANA KLEARY, an individual; and
DOES 1 to 100, inclusive,**

Defendants.

Case No. 34-2020-00278067

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Minimum Wages**
- 2. Failure to Pay Overtime**
- 3. Failure to Provide Meal Periods**
- 4. Failure to Provide Rest Periods**
- 5. Failure to Provide Accurate Wage
Statements**
- 6. Waiting Time Penalties**
- 7. Unfair Competition**
- 8. Failure to Reimburse Expenses**
- 9. Private Attorneys General Act**
- 10. Failure to Pay Prevailing Wages**
- 11. Failure to Pay Reporting Time Pay**

JURY TRIAL DEMANDED

Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR. ("Plaintiffs"), individuals, hereby
file this Class Action Complaint against Defendants KLEARY MASONRY, INC., a California
Corporation; and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are
informed and believe, and on the basis of that information and belief, alleges as follows:

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1 Labor Code violations outlined in the First through Sixth and Eighth through Eleventh Causes of Action.
2 As such DIANA KLEARY is individually liable pursuant to California Labor Code section 558.1.

3 8. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of
4 KLEARY MASONRY, INC., MICHAEL G. KLEARY, NICK KLEARY, and DIANA KLEARY,
5 corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiffs will
6 seek to amend this Complaint to allege the true names and capacities of these DOE defendants when
7 they are ascertained. At all times mentioned herein, each defendant was the agent or employee of each
8 of the other defendants and was acting within the course and scope of such agency or employment. The
9 defendants are jointly and severally liable to Plaintiffs.

10 9. All defendants, and each of them, are now and/or at all times mentioned in this
11 Complaint, were members of and/or engaged in a joint employment, joint venture, partnership and
12 common enterprise, and were acting within the course and scope of, and in pursuance of said joint
13 employment, joint venture, partnership, and common enterprise.

14 10. All defendants, and each of them, are now and/or at all times mentioned in this
15 Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this
16 Complaint.

17 11. All defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
18 wrongs, complaints, injuries, and/or damages alleged in this Complaint.

19 **JURISDICTION AND VENUE**

20 12. The Sacramento Superior Court has jurisdiction in this matter due to alleged violations of
21 California Labor Code, Business and Professions Code, and Industrial Welfare Commission Wage Order
22 ("Wage Order") 16.

23 13. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
24 Defendants' reside in Sacramento County and some of the wrongful acts and violations of law asserted
25 herein occurred within Sacramento. Additionally, Defendants' obligation to pay wages, including
26 minimum wages, overtime wages, and meal and rest period premiums arose in Sacramento County
27 pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

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14. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as Private Attorney Generals on behalf of themselves and other aggrieved employees. Pursuant to California Labor Code section 2699.3, Plaintiffs gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately April 17, 2020 and June 19, 2020. Plaintiffs provided facts and legal bases for their claims within the notices to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiffs also submitted the \$75.00 filing fee. The April 17, 2020 and June 19, 2020 notices were also sent via certified mail to Defendants. Plaintiffs are informed and believe that, to date, the LWDA has not provided any response to Plaintiffs' notice correspondences. Accordingly, Plaintiffs are informed and believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of themselves and all aggrieved employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved employees includes, but is not limited to all of Defendants' non-exempt, hourly employees who performed work in California.

CLASS ALLEGATIONS

15. Plaintiffs brings the First through Eighth Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. The class(es) which Plaintiffs seek to represent are composed of, and defined, as follows:

All individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from May 6, 2016 to the present.

16. This action may be maintained as a class action because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

17. **Numerosity:** The Plaintiff Class is so numerous that the individual joinder of all members is impracticable. While the actual number of class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that more than approximately 50 individuals were subjected to the practices outlined in this Complaint relating to the First through Eighth Causes of Action.

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1 18. Common Questions Predominate: Common questions of law and fact exist as to all
2 members of the Plaintiff Class and predominate over questions that affect only individual class
3 members. These common questions of law and fact include, without limitation, the following:

- 4 (1) Whether Defendants had a policy and/or practice of paying putative class members
5 for all hours worked;
- 6 (2) Whether Defendants had a policy and/or practice of paying reporting time pay for
7 each workday that putative class members were required to report to the work site but
8 not put to work;
- 9 (3) Whether Defendants had a policy and/or practice of paying the putative class for all
10 overtime hours worked;
- 11 (4) Whether Defendants had a policy and/or practice of paying putative class members all
12 prevailing wages owed;
- 13 (5) Whether Defendants had a policy and practice authorizing legally compliant meal
14 periods;
- 15 (6) Whether Defendants had a policy and practice authorizing legally compliant rest
16 periods;
- 17 (7) Whether Defendants had a policy and/or practice authorizing and permitting the
18 putative class to take second meal periods when they worked more than ten (10) hours
19 in a day;
- 20 (8) Whether Defendants had a policy and/or practice authorizing and permitting the
21 putative class to take third rest periods when they worked more than ten (10) hours in
22 a day;
- 23 (9) Whether putative class members were given paystubs that complied with California
24 Labor Code section 226;
- 25 (10) Whether as a result of Defendants' payroll policies, or a lack thereof, putative class
26 members received all wages, due and owing, at the time of their
27 termination/separation; and
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1 (11) Whether Defendants had a policy and/or practice to reimburse the putative class for
2 expenses incurred for work.

3 19. Typicality: Plaintiffs' claims are typical of the claims for the members of the Plaintiff
4 Class. Plaintiffs also sustained damages arising out of Defendants' common course of conduct in
5 violation of the law as complained of herein. As a result, each putative class member will have the
6 same basis for unpaid wage claims as do Plaintiffs.

7 20. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of
8 the Plaintiff Class. Plaintiffs have no interests which are adverse to those of absent class members.
9 Additionally, Plaintiffs have retained counsel who has substantial experience in complex civil
10 litigation and employment law matters.

11 21. Superiority: A class action is superior to other available means for the fair and
12 efficient adjudication of the controversy since individual joinder of all members of the class is
13 impracticable. Class action treatment will permit a larger number of similarly situated employees to
14 prosecute their common claims in a single forum simultaneously, efficiently, and without the
15 unnecessary duplication of effort and expense that numerous individual actions would engender.
16 Further, as damages suffered by each individual member of the class may be relatively small, the
17 expenses and burden of the individual litigation would make it difficult or impossible for individual
18 members of the class to redress wrongs done to them, and an important public interest will be served
19 by addressing the matter as a class action. The cost to the court system of adjudication of such
20 individualized litigation would be substantial. Individualized litigation would also present the
21 potential for inconsistent or contradictory judgments.

22 22. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
23 management of this action that would preclude its maintenance as a class action.

24 GENERAL ALLEGATIONS

25 23. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 22 as though fully
26 set forth herein.

27 24. Plaintiff Ricardo Gomez, Jr. worked for Defendants from approximately 2014 to April
28 2020 as an hourly, non-exempt employee. Plaintiff Ricardo Gomez, Sr. similarly worked for

1 Defendants within the last year prior to the filing of this Complaint. Similarly situated employees also
2 worked for Defendants as non-exempt, hourly employees.

3 25. Generally, Plaintiffs and similarly situated employees were required to drive to
4 Defendants' shop in the morning to pick up tools, materials, and/or equipment for work and drive to
5 Defendants' shop at the end of the day to return the tools, materials, and/or equipment as needed.
6 Plaintiffs and similarly situated employees would also be required to appear at the shop in the morning
7 in order to attend necessary meetings or to receive job assignments. However, Defendants did not pay
8 Plaintiffs and similarly situated employees for their time spent at the shop in the morning and driving to
9 the first jobsite or for the time spent driving back to the shop at the end of the day from the last jobsite
10 and time spent unloading equipment and materials. Because the locations of the job sites varied from
11 day to day, Plaintiffs and similarly situated employees would have to check in with supervisors via their
12 personal cell phone either the night before or the morning of in order to know exactly when Plaintiffs
13 and similarly situated employees needed to arrive at the shop, complete their tasks, and still have enough
14 time to travel to the first job site.

15 26. There were several occasions when Plaintiffs and similarly situated employees were
16 instructed to report to the shop in the morning to receive their job assignment. Plaintiffs and similarly
17 situated employees would sometimes wait at the shop for an hour or more before receiving their job
18 assignment. There were also occasions where Defendants told Plaintiffs and similarly situated
19 employees to just go home after they had been waiting at the shop because there was no work that day.
20 Plaintiffs and similarly situated employees were not paid for the time they spent at the shop, and if they
21 were sent home without work, did not receive any pay that day at all. Defendants would also instruct
22 Plaintiffs and similarly situated employees to report to the jobsite on rainy days and wait to see if the
23 rain was going to clear up. If the rain did not clear, Defendants would send Plaintiffs and similarly
24 situated employees home, and Plaintiffs and similarly situated employees did not receive any pay for
25 that day.

26 27. On days when Plaintiffs and similarly situated employees reported to the jobsite rather
27 than going to the shop, Plaintiffs and similarly situated employees generally began loading their trucks
28 early in the morning, for example around 4:00 a.m. or 5:00 a.m., with their personal tools. Typically,

1 Plaintiffs and similarly situated employees would arrive at the jobsite and start working about 15
2 minutes before their scheduled start time. Defendants instructed Plaintiffs and similarly situated
3 employees to arrive early to unload tools and supplies from trucks and prepare supplies they would be
4 using that day. Defendants did not pay Plaintiffs and similarly situated employees for this time.

5 28. Although Plaintiffs typically began work much earlier (e.g., 4:00 a.m.), Defendants
6 recorded Plaintiffs and similarly situated employees' start time or instructed Plaintiffs and similarly
7 situated employees to record their start time as the time they were scheduled to begin work at the first
8 jobsite, for example 7:00 a.m., and to record their end time as the time they left the last jobsite. As a
9 result, Defendants failed to pay Plaintiffs and similarly situated employees all minimum and overtime
10 wages they were owed and failed to keep accurate records of employees' hours worked.

11 29. Defendants failed to reimburse Plaintiffs and similarly situated employees for the use of
12 their personal phones, personal vehicles, and personal tools. Plaintiffs and similarly situated employees
13 would use their personal vehicles to transport their personal tools to the jobsite, pick up tools and
14 supplies from the shop, and drive to the jobsites. Plaintiffs and similarly situated employees would use
15 their personal cellphones to check in with supervisors for job assignments among other necessary
16 communications. Defendants did not have any policy to reimburse Plaintiffs and similarly situated
17 employees for the use of their personal cellphones, vehicles or tools.

18 30. Plaintiffs and similarly situated employees regularly missed their meal and rest periods
19 due to Defendants' lack of policies, the workload demands imposed by Defendants, and the failure to
20 properly communicate meal and rest period requirements. For example, Plaintiffs and similarly situated
21 employees frequently did not get any meal period at all, received a meal period shorter than 30 minutes,
22 or began their meal period after their fifth hour of work, especially on days when cement was delivered
23 to the jobsite. Plaintiffs and similarly situated employees had to be working when the cement was
24 delivered so that the work could be completed before the cement dried and so that multiple cement
25 deliveries could be accommodated. Defendants did not have any policy to authorize and permit rest
26 periods. For example, if Defendants saw employees trying to take a short break to get some water or sit
27 down, they would tell the employees to go home if they weren't going to work. Plaintiffs and similarly
28 situated employees also frequently worked over ten (10) hours in a day, however, Defendants did not

1 have any policy or practice to authorize and permit Plaintiffs and similarly situated employees to take
2 second meal periods or third rest periods. Plaintiffs and similarly situated employees did not waive their
3 second meal periods. Defendants did not pay Plaintiffs and similarly situated employees missed meal
4 and rest period premiums.

5 31. Defendants failed to pay Plaintiffs and similarly situated employees all prevailing wages
6 and overtime wages they were owed. For example, Plaintiffs and similarly situated employees would
7 work jobs they believed were public works jobs or jobs where a State Inspector/State Superintendent
8 would inform employees that they were working on a public works job and that they should be getting
9 prevailing wages, but then Defendants would not pay the prevailing wages. In addition, Defendants
10 would not pay Plaintiffs and similarly situated employees any overtime wages on certain prevailing
11 wage jobs for the State. When Plaintiffs and similarly situated employees worked overtime hours on
12 these jobs, Defendants only paid them straight time. Furthermore, on those occasions where Plaintiffs
13 and similarly situated employees worked on public works jobs earning prevailing wages and non-
14 prevailing wage jobs in the same work week, Defendants failed to take into account the value of the
15 prevailing wages earned when calculating Plaintiffs' and similarly situated employees' regular rate of
16 pay for the purpose of paying overtime on non-prevailing wage jobs.

17 32. As a result of Defendants' policies and practices described above, Plaintiffs and similarly
18 situated employees were not given accurate wage statements itemizing their total regular and overtime
19 hours worked and corresponding rates of pay, total regular and overtime prevailing wage hours worked
20 and corresponding rates of pay, meal and rest period premiums, or correct amount of gross and net
21 wages earned.

22 33. Defendants also failed to timely pay Plaintiffs and similarly situated employees the wages
23 owed to them upon their termination or separation, including minimum and overtime wages, reporting
24 time pay, prevailing wages, and meal and rest period premiums.

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CAUSES OF ACTION
FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to All Defendants)

34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33 as though fully set forth herein.

35. For the three (3) years preceding the filing of this Action, Defendants were required to compensate Plaintiffs and similarly situated employees with at least the State's minimum wage at the time of \$10.00 per hour for all time worked from January 1, 2016, until December 31, 2016, \$10.50 per hour for all time worked from January 1, 2017, until December 31, 2017, \$11.00 per hour for all time worked from January 1, 2018, to December 31, 2018, \$12.00 per hour for all time worked from January 1, 2019 to December 31, 2019, and \$13.00 per hour for all time worked from January 1, 2020 to the present. *See, e.g.*, Minimum Wage Order 2019; Labor Code § 1194; IWC Wage Order No. 16-2001, §

4. Further, "each workday that an employee is required to report to a work site and does report, but is not put to work or is furnished less than half of his/her usual or schedule day's work, the employer shall pay him/her for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage." *See* IWC Wage Order No. 16-2001, § 5(B).

36. Defendants failed to consider all compensable time, including time spent loading their trucks with tools in the morning, time spent preparing at the jobsite prior to their scheduled start time, time spent at Defendants' shop in the morning, driving to the first jobsite, driving back to the shop at the end of the day from the last jobsite, and time spent at the shop at the end of the day when calculating Plaintiffs' and similarly situated employees' hours worked. Defendants further failed to pay Plaintiffs for those instances when Plaintiffs and similarly situated employees were asked to report to the shop or jobsite and later sent home without work. As a result, Plaintiffs and similarly situated employees were not paid all minimum wages.

37. Plaintiffs and similarly situated employees were not exempt to the State's Wage Orders. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

1 38. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
2 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
3 the extent pertinent as if set forth here in full.

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME**
6 **(As to All Defendants)**

7 39. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 38 as though
8 fully set forth herein.

9 40. During the period Plaintiffs and similarly situated employees were employed by
10 Defendants, Defendants were required to compensate them at one and one-half (1½) times the
11 regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per
12 week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per
13 day or in excess of eight (8) hours per day on the seventh (7th) day of work. *See, e.g.,* Cal. Labor
14 Code §§ 510, 1194.

15 41. Plaintiffs and similarly situated employees regularly worked in excess of eight (8)
16 hours in a day and forty (40) hours each week, but Defendants did not pay Plaintiffs and similarly
17 situated employees all overtime owed to them because they failed to account for time spent loading
18 their trucks with tools in the morning, time spent preparing at the jobsite prior to their scheduled start
19 time, time spent at Defendants' shop in the morning, driving to the first jobsite, driving back to the
20 shop at the end of the day from the last jobsite, and time spent at the shop at the end of the day when
21 calculating Plaintiffs' and similarly situated employees' hours worked. Defendants further failed to
22 account for time spent during those instances when Plaintiffs and similarly situated employees were
23 asked to report to the shop or jobsite and later sent home without work. Defendants also failed to
24 pay overtime wages on certain prevailing wage jobs.

25 42. Plaintiffs and similarly situated employees were non-exempt employees under Wage
26 Order 16-2001 and California Labor Code section 510.

27 43. Defendants' conduct described herein violates California Labor Code sections 510 and
28 1194, and applicable Wage Order. As a proximate result of Defendants' conduct, Plaintiffs and
similarly situated employees have been damaged and deprived of overtime wages for three (3) years

1 from the filing of this Complaint. Plaintiffs and similarly situated employees now seek these wages,
2 attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL PERIODS**
5 **(As to All Defendants)**

6 44. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 43 as though
7 fully set forth herein.

8 45. An employer must provide an employee a meal period in accordance with the
9 applicable Wage Order, and Labor Code sections 226.7 and 512.

10 46. Labor Code sections 226.7 and 512 and Wage Order 16-2001, section 10(A) require
11 an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each
12 work period of more than five (5) hours.

13 47. Labor Code section 512 further provides that employers may not employ employees
14 for a work period for more than ten (10) hours per day without providing the employee with a second
15 meal period of at least thirty (30) minutes. However, if the total hours worked is no more than
16 twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the
17 first meal period.

18 48. Plaintiffs allege that Defendants failed to authorize and permit meal periods, including a
19 second meal period when Plaintiffs and similarly situated employees worked more than ten (10) hours in
20 a day. Plaintiffs and similarly situated employees regularly missed their meal periods due to
21 Defendants' lack of policies, the workload demands imposed by Defendants and the failure to properly
22 communicate meal and rest period requirements. Defendants failed to pay Plaintiffs and similarly
23 situated employees applicable meal period premiums for all missed meal periods.

24 49. As a proximate cause of Defendants' failure to permit meal periods as legally
25 required, Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at their
26 regular rate of compensation for each meal period not provided, as a wage, from three (3) years from
27 the filing of this Complaint. See Labor Code § 226.7 and Wage Order 16-2001, § 10(B).

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1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE REST PERIODS**
3 **(As to All Defendants)**

4 50. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 49 as though
5 fully set forth herein.

6 51. An employer must provide an employee a rest period in accordance with the
7 applicable Wage Order and Labor Code section 226.7.

8 52. Labor Code section 226.7 and Wage Order 16-2001, section 11(A) require an
9 employer to provide a meal period of not less than ten (10) minutes for each work period of more
10 than four (4) hours or a major fraction thereof.

11 53. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
12 situated employees to take rest breaks, including a third rest breaks of at least ten (10) minutes when
13 Plaintiffs and similarly situated employees worked over ten (10) hours in a day. Plaintiffs regularly
14 missed their rest periods due to Defendants' lack of policies, the workload demands imposed by
15 Defendants and the failure to properly communicate meal and rest period requirements. Defendants
16 failed to pay all missed rest period premiums owed to Plaintiffs and similarly situated employees.

17 54. As a proximate cause of Defendants' failure to "authorize and permit" rest periods,
18 Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at their regular rate of
19 compensation for each rest period not provided, as a wage, from three (3) years from the filing of this
20 Complaint. See Labor Code § 226.7 and Wage Order 16-2001, § 11(B).

21 **FIFTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
23 **(As to All Defendants)**

24 55. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 54 as though fully
25 set forth herein.

26 56. According to Labor Code section 226(a), an employer must provide an itemized
27 statement to an employee, semi-monthly or at the time of each payment of wages, showing:
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1 (1) gross wages earned, (2) total hours worked by the employee,
2 except for any employee whose compensation is solely based on a
3 salary and who is exempt from payment of overtime under subdivision
4 (a) of Section 515 or any applicable order of the Industrial Welfare
5 Commission, (3) the number of piece-rate units earned and any
6 applicable piece rate if the employee is paid on a piece-rate basis, (4)
7 all deductions, provided that all deductions made on written orders of
8 the employee may be aggregated and shown as one item, (5) net wages
9 earned, (6) the inclusive dates of the period for which the employee is
10 paid, (7) the name of the employee and the last four digits of his or her
11 social security number or an employee identification number other
12 than a social security number, (8) the name and address of the legal
13 entity that is the employer and, if the employer is a farm labor
14 contractor, as defined in subdivision (b) of Section 1682, the name and
15 address of the legal entity that secured the services of the employer,
16 and (9) all applicable hourly rates in effect during the pay period and
17 the corresponding number of hours worked at each hourly rate by the
18 employee. The deductions made from payment of wages shall be
19 recorded in ink or other indelible form, properly dated, showing the
20 month, day, and year, and a copy of the statement and the record of
21 the deductions shall be kept on file by the employer for at least three
22 years at the place of employment or at a central location within the
23 State of California.

24 57. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
25 itemized statement or failed to provide an accurate and complete itemized statement showing the
26 requirements set forth in Labor Code section 226(a). Specifically, Defendants failed to itemize
27 Plaintiffs' and similarly situated employees' total regular and overtime hours worked on regular and
28 prevailing wage jobs and the corresponding rates of pay, meal and rest period premiums, and accurate
gross and net wages.

58. Additionally, Plaintiffs allege that they and similarly situated employees suffered
injury as a result of Defendants' failure to provide accurate and complete information as required by
any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a). Plaintiffs
and similarly situated employees were not able to promptly and easily determine their total hours
worked from their paystubs alone. Additionally, Plaintiffs and similarly situated employees suffered
confusion over whether they received all wages owed and were prevented from effectively
challenging information on their wage statements.

59. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiffs and similarly situated employees were damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to All Defendants)

60. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 59 as though fully set forth herein.

61. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Labor Code § 201.

62. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. See Labor Code § 202.

63. Plaintiffs and similarly situated employees did not receive all wages, including minimum and overtime wages, prevailing wages, reporting time pay, and meal and rest period premiums upon their termination or resignation.

64. An employer who willfully fails to pay an employee wages in accordance with Labor Code §§ 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Labor Code § 203.

65. Defendants knew of their obligation to pay Plaintiffs and similarly situated employees all wages owed when their employment ended. Indeed, Defendants' failure to do so was conscious disregard of the law as Defendants were aware of the unpaid hours Plaintiffs and similarly situated employees were working. Such conduct shows Defendants' knowledge of their obligation pay minimum wages and overtime compensation upon separation and their willful refusal.

66. As a proximate result of the Defendants' conduct, Plaintiffs and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION

(As to Defendants Kleary Masonry, Inc. and DOES 1 to 100)

67. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 66 as though fully set forth herein.

68. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

69. Plaintiffs and similarly situated employees were not paid all wages during their employment, as Defendants did not pay them all minimum wages, overtime wages, prevailing wages, reporting time pay, and meal and rest period premiums.

70. Plaintiffs are also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

71. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution as a result of Defendants' unfair business practices, including, but not limited to, interest and penalties pursuant to B&P §§ 17203, 17208, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Complaint.

EIGHTH CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENT EXPENSES
(As to All Defendants)

72. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 71 as though fully set forth herein.

73. Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

1 74. Defendants required Plaintiffs and similarly situated employees to use their personal cell
2 phones, personal vehicles, and personal tools for work purposes. Defendants did not reimburse
3 Plaintiffs and similarly situated employees for these expenses.

4 75. Defendants' conduct described herein violated California Labor Code section 2802. As a
5 proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged
6 as stated in the section below titled "DAMAGES."

7 **NINTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(As to All Defendants)**

10 76. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 75 as though fully
11 set forth herein.

12 77. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the
13 following provisions of the Labor Code in their dealings with Plaintiffs and other similarly situated
14 current and former employees:

- 15 • Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to
16 Pay Overtime Wages)
- 17 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay
18 Minimum Wages)
- 19 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements)
- 20 • Violation of Labor Code §§ 226, 226.3, 1776 (Failure to Provide Accurate Wage
21 Statements)
- 22 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 23 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
24 Work in Any Industrial Welfare Commission Order)
- 25 • Violation of Labor Code §§ 226.3, 1174, 1198; IWC Wage Order No. 16, § 6(A)
26 (Failure to Maintain Accurate Records)
- 27 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order No. 16, §§10(A) and 10(B)
28 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

- Violation of Labor Code § 226.7; IWC Wage Order No. 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Wage Order No. 16, § 5 (Failure to Pay Reporting Time)
- Violation of Labor Code §§ 1771, 1774 (Failure to Pay Prevailing Wages)

78. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

79. Plaintiffs seek these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

TENTH CAUSE OF ACTION
FAILURE TO PAY PREVAILING WAGES
(As to All Defendants)

80. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 79 as though fully set forth herein.

81. California Labor Code section 1771 states, "[e]xcept for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works." California Labor Code section 1774 states, "[t]he contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract."

82. Plaintiffs worked on public works jobs but were not paid the specified prevailing wage regular and overtime rates

83. Defendants failed to consider all compensable time, including time spent loading their trucks with tools in the morning, time spent preparing at the jobsite prior to their scheduled start time, time spent at Defendants' shop in the morning, driving to the first jobsite, driving back to the shop at the end of the day from the last jobsite, and time spent at the shop at the end of the day when calculating Plaintiffs' and similarly situated employees' hours worked. Defendants further failed to pay Plaintiffs

1 for those instances when Plaintiffs and similarly situated employees were asked to report to the shop or
2 jobsite and later sent home without work. As a result, Plaintiffs and similarly situated employees were
3 not paid all minimum wages.

4 84. Plaintiffs and similarly situated employees were not exempt to the State's Wage Orders.
5 Defendants were aware of their obligation to pay the minimum wages but failed to do so.

6 85. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **ELEVENTH CAUSE OF ACTION**
10 **FAILURE TO PAY REPORTING TIME**
11 **(As to All Defendants)**

12 86. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 85 as though
13 fully set forth herein.

14 87. Pursuant to its authority under California Labor Code section 1173, the Industrial
15 Welfare Commission promulgated Wage Order 16-2001. Wage Order 16-2001 mandates that "[e]ach
16 workday that an employee is required to report to a work site and does report, but is not put to work or is
17 furnished less than half of his/her usual or scheduled day's work, the employer shall pay him/her for half
18 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
19 hours at the employee's regular rate of pay, which shall not be less than the minimum wage." See IWC
20 Wage Order No. 16-2001, § 5(B). Defendants failed to pay Plaintiffs for those instances when Plaintiffs
21 and similarly situated employees were asked to report to the shop or jobsite and later sent home without
22 work. As a result, Plaintiffs and similarly situated employees were not paid all minimum wages.

23 88. Plaintiffs and similarly situated employees were not exempt to the State's Wage Orders.
24 Defendants were aware of their obligation to pay the minimum wages but failed to do so.

25 89. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
26 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
27 the extent pertinent as if set forth here in full.

28 //

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;
2. **As to the First Cause of Action:**
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
 - d. Liquidated damages pursuant to Labor Code section 1194.2;
3. **As to the Second Cause of Action:**
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
4. **As to the Third and Fourth Causes of Action:**
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6, and to California Code of Civil Procedure section 1021.5;
5. **As to the Fifth Cause of Action:**
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which the violation occurred and one hundred dollars (\$100) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000);
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);
6. **As to the Eighth Cause of Action:**
 - a. All reimbursement expenses earned and owing in an amount to be proven at trial;
 - b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

1 **7. As to the Ninth Cause of Action:**

- 2 a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- 3 b. For those Labor Code sections, the violation of which there is no civil penalty
- 4 provided, the default penalty provided in Labor Code section 2699(f): for any initial
- 5 violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For
- 6 any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per
- 7 pay period;
- 8 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 9 d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

10 **8. As to the Tenth Cause of Action:**

- 11 a. Wages in an amount to be proven at trial;
- 12 b. Interest for the wages due pursuant to Labor Code section 1194;
- 13 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code sections
- 14 1194, 1021.5, and 218.5;

15 **9. As to the Eleventh Cause of Action:**

- 16 a. Wages in an amount to be proven at trial;
- 17 b. Interest for the wages due pursuant to Labor Code section 1194;
- 18 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code sections
- 19 1194, 1021.5, and 218.5;

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- 1 10. For such other and further relief as this Court may deem just and proper, including, but
2 not limited to:
3 a. Wages as proven at trial;
4 b. Injunctive and Declaratory relief
5 c. Reasonable attorney's fees and costs as provided by law; and
6 d. Interest.

7
8 Dated: December 23, 2020

Shimoda Law Corp.

9
10 By: _____

11 
12 Galen T. Shimoda
13 Justin P. Rodriguez
14 Brittany V. Berzin
15 Attorneys for Plaintiffs

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On January 5, 2021, I served the following documents on the party below:

- 9 • Second Amended Complaint for Damages

10 Lisa V. Ryan (SBN: 217802)
11 Cook Brown, LLP
12 2407 J Street, 2nd Floor
13 Sacramento, CA 95816
14 Telephone: (916) 442-3100
15 Facsimile: (916) 442-4227
16 Email: lryan@cookbrown.com

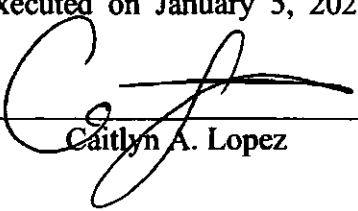
17 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
18 processing of correspondence for mailing with the United States Postal
19 Service and that each day's mail is deposited with the United States Postal
20 Service that same day in the ordinary course of business. On the date set
21 forth above, I served the aforementioned document(s) on the parties in
22 said action by placing a true copy thereof enclosed in a sealed envelope
23 with postage thereon fully prepaid, for collection and mailing on this date,
24 following ordinary business practices, at Elk Grove, California, addressed
25 as set forth above.

26 [] [By Personal Service] By personally delivering a true copy thereof to the
27 office of the addressee above.

28 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on January 5, 2021, at Elk Grove,
25 California

26 
Caitlyn A. Lopez

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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY