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Attorneys for Plaintiff DAVID HERNANDEZ, as an individual and on behalf of all similarly situated employees,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**THE COUNTY OF SANTA CLARA**

DAVID HERNANDEZ,  
Plaintiff,

v.

BURDICK PAINTING; and DOES 1  
through 50, inclusive,  
pDefendants.

Case No.:  
20CV366446  
**CLASS ACTION**

**COMPLAINT FOR DAMAGES**

1. Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Labor Code §§ 226.7 (Rest Period Violations);
4. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
5. Violation of Labor Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5 (Failure to Issue Accurate Itemized Wage Statements);
6. Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties); and
7. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

**DEMAND FOR JURY TRIAL**

1 Plaintiff DAVID HERNANDEZ (“Plaintiff”), as an individual and on behalf of all  
2 similarly situated employees, complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to  
5 represent (“Plaintiff Class” or “Class Members.”) Plaintiff Class consists of all current and former  
6 non-exempt employees of Defendants BURDICK PAINTING, and DOES 1 through 50, inclusive  
7 (collectively, “Defendants”), in the State of California during the Class Period. The term “Class  
8 Period” is defined as four (4) years prior to the filing of this complaint through judgment. Plaintiff  
9 reserves the right to amend this complaint to reflect a different “Class Period” as further discovery  
10 is conducted.

11 2. Plaintiff, individually and on behalf of Plaintiff Class, seeks relief against  
12 Defendants, for Defendants’ practices of violating the applicable Industrial Welfare Commission  
13 (“IWC”) Wage Orders, Code of Regulations, and Labor Codes, including: (1) failure to pay all  
14 wages (including minimum, regular, and overtime); (2) failure to make available meal and rest  
15 periods or provide compensation in lieu thereof; (3) failure to provide accurate itemized wage  
16 statements; (4) failure to pay all wages due upon separation of employment; and (5) failure to  
17 reimburse business expenses. These violations concern current and past employees of Defendants.

18 3. At all relevant times herein, Defendants have consistently maintained and enforced  
19 against Plaintiff and Plaintiff Class the unlawful practices and policies set forth herein.

20 **JURISDICTION AND VENUE**

21 4. Venue is proper in this judicial district and the County of Santa Clara, pursuant to  
22 the Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the causes  
23 of action alleged herein occurred in this county.

24 5. This Court has personal jurisdiction over Defendants because Defendants reside  
25 in, are incorporated in, have their main place of business in, and/or conduct business in the State  
26 of California, and a substantial portion of the acts, omissions, events, and transactions constituting  
27 the causes of action alleged herein occurred within the State of California, and more specifically,  
28 in the county of Santa Clara. (Code Civ. Proc., § 410.10.)

6. The California Superior Court has jurisdiction over this matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court; and upon information and belief, Plaintiff and Defendants are citizens of, residents of, and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Rules of Court, and the Business & Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this matter.

## THE PARTIES

## Plaintiff

7. Plaintiff was employed by Defendants as a non-exempt hourly painter from approximately November 2018 to May 15, 2019. At all relevant times herein, Plaintiff was employed by Defendants in a paid hourly non-exempt position. At all relevant times herein, Plaintiff's job duties entailed painting interior and exterior of industrial and/or commercial buildings. Plaintiff was entitled to compensation for all hours worked, including minimum, regular, and overtime wages, as well as meal and rest period premiums, and reimbursement for all necessary business expenditures from Defendants. Plaintiff was employed by Defendants within the four (4) years prior to the commencement of this action.

8. Each of the Plaintiff Class consists of identifiable, current, and/or former similarly situated persons who were employed by Defendants as non-exempt employees in California during the Class Period.

## Defendants

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant BURDICK PAINTING is a painting contractor with considerable experience in taping, painting, specialty coating such as Zolatone and Schuffmaster, and intumescent coatings, handling various size interior and exterior commercial and industrial projects throughout California, including Santa Clara County, and was Plaintiff's employer. On information and belief, and based thereon,

1 Plaintiff alleges that Defendant is a California corporation and is conducting business in good  
2 standing in California, and at all times herein mentioned has regularly conducted business  
3 throughout the State of California.

4 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
5 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,  
6 inclusive, but on information and belief, alleges that said Defendants are legally responsible for  
7 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and  
8 capacities of the DOE Defendants when that information is ascertained.

9 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
10 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
11 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant  
12 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint  
13 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,  
14 are alter egos, joint employers, and conspire with one another to increase profits by engaging in  
15 the conduct described in this complaint.

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

### 23 **ADMINISTRATIVE PREREQUISITES**

24 13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause  
25 of action under PAGA only after giving the Labor Workforce Development Agency ("LWDA")  
26 and the employer notice of the Labor Code sections alleged to have been violated, and after  
27 receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days  
28 have passed without notice from the LWDA.

1           14.     On April 3, 2020, prior to the filing of this complaint, Plaintiff gave written notice  
2 of the specified provisions alleged to have been violated, including the facts and theories to  
3 support the alleged violations, as required by Labor Code section 2699.3. This written notice was  
4 given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via  
5 the Department of Industrial Relations website. Plaintiff was given a LWDA case number of  
6 LWDA-CM-781911-20. A true and correct copy of Plaintiff's notice to the LWDA and  
7 Defendants, dated April 3, 2020, is attached hereto as Exhibit A.

8           15.     Under Labor Code section 2699.3, subdivision (a)(2)(C), "Notwithstanding any  
9 other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a  
10 cause of action arising under this part at any time within sixty (60) days of the time periods  
11 specified in this part." Therefore, Plaintiff intends on amending his complaint upon the expiration  
12 of the sixty-five (65) day period for the LWDA to provide notice of its intent to investigate  
13 Plaintiff's claims, if the LWDA fails to provide notice.

14                                   **FACTUAL ALLEGATIONS**

15           16.     Plaintiff and Plaintiff Class are, and all times relevant herein, have been non-  
16 exempt employees within the meaning of the Labor Code, and the implementing rules of the IWC  
17 Wage Orders.

18           17.     Plaintiff is informed and believes, and based thereon alleges, that Defendants  
19 continue to employ non-exempt employees within California.

20           18.     Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
21 policies and practices described herein are common across each of Defendants' locations within  
22 the State of California.

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

27           20.     Plaintiff is informed and believes, and based thereon alleges, that Defendants knew  
28 or should have known that Plaintiff and Class Members were entitled to receive wages for all

1 hours worked, including minimum, regular, and overtime wages, and that they were not receiving  
2 all wages earned for work that was required to be performed. In violation of the Labor Code and  
3 IWC Wage Orders, Defendants failed to pay Plaintiff and Class Members' earned wages by  
4 failing to record all hours worked, paying for all hours worked, and paying the proper overtime  
5 and double time rates of pay, among other things. Further, Defendants failed to record and/or pay  
6 Plaintiff and Class Members for all hours worked in excess of eight (8) hours and/or twelve (12)  
7 hours per workday and failed to pay said hours at the proper overtime and double time rates.

8         21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew  
9 or should have known that Plaintiff and Class Members were entitled to receive all required meal  
10 periods or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate  
11 of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the  
12 Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not  
13 providing proper meal periods. Plaintiff and Class Members regularly had their meal periods  
14 interrupted as a result of understaffing and a busy workload. In addition to having their meal  
15 periods interrupted, Plaintiff and Class Members were required to return to work before the end  
16 of their thirty (30) minute meal periods and continue working when the restaurants were busy.  
17 Despite returning to work before the end of their thirty (30) minute meal periods, Defendants  
18 would alter Plaintiff and Class Members' time records to reflect a thirty (30) minute meal period.  
19 As a result of Defendants' understaffing and daily work requirements and demands, Plaintiff and  
20 Class Members did not receive all meal periods or payment of one (1) additional hour of pay at  
21 Plaintiff and Class Members' regular rate of pay when they did not receive a timely, uninterrupted  
22 thirty (30) minute off-duty meal period.

23         22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew  
24 or should have known that Plaintiff and Class Members were entitled to receive all paid rest  
25 periods or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate  
26 of pay when a rest period was missed, interrupted, or shortened. In violation of the Labor Code  
27 and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing paid rest  
28 periods. Defendants instructed Plaintiff and Class Members to forego their rest breaks when the

1 restaurants were busy. As a result of Defendants' understaffing and daily work requirements and  
2 demands, Plaintiff and Class Members did not receive all paid rest periods or payment of one (1)  
3 additional hour of pay at Plaintiff and Class Members' regular rate of pay when a paid rest period  
4 was missed, truncated, or interrupted.

5 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew  
6 or should have known that Plaintiff and Class Members were entitled to receive itemized wage  
7 statements that accurately showed their actual hours worked, total hours worked, number of hours  
8 worked at each hourly rate, gross and net wages earned, and premium wages earned per pay period  
9 in accordance with California law. In violation of the Labor Code, Plaintiff and Class Members  
10 were not provided with accurate itemized wage statements.

11 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew  
12 or should have known that Plaintiff and certain Class Members were entitled to timely payment  
13 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain  
14 Class Members did not receive payment of all wages due, within permissible time periods, upon  
15 separation of employment.

16 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew  
17 or should have known that Plaintiff and Class Members were entitled to receive business  
18 reimbursements for necessary expenditures incurred in connection with the performance and  
19 execution of their job duties such as mileage for use of their personal vehicles. Defendants  
20 required Plaintiff and Class Members to regularly use their personal vehicles to drive from jobsite  
21 to jobsite to carry paint for Defendant's various painting projects, without reimbursing them for  
22 mileage and wear and tear on their vehicles. Defendants also failed to maintain adequate insurance  
23 coverage, reimburse Plaintiff and Class Members for additional insurance premiums for the use  
24 of their personal vehicles to perform job-related tasks, and pay for any deductibles or costs  
25 associated with automobile accidents that arose while Plaintiff and Class Members used their  
26 personal vehicles to run errands for Defendants. In violation of the Labor Code, Defendants failed  
27 to reimburse Plaintiff and Class Members for these business-related expenditures.

28 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew

1 or should have known that Plaintiff and Class Members were entitled to receive business  
2 reimbursements for necessary expenditures incurred for maintenance and upkeep of uniforms  
3 marked with Defendant's logos. Defendant required Plaintiff and Class Members to wear  
4 uniforms with Defendant's logos on the job. However, Plaintiff and Class Members were  
5 obligated to bear all costs and expenses associated with the upkeep of their uniforms. Defendant's  
6 failure to provide maintenance or reimbursement to Plaintiff and Class Members for expenditures  
7 herein mentioned is in violation of the Labor Code.

#### 8 **CLASS ALLEGATIONS**

9 27. Plaintiff brings this action on behalf of himself and all other similarly situated  
10 employees, as a class action pursuant to Code of Civil Procedure section 382.

11 28. Plaintiff's proposed class consists of and is defined as follows: all individuals who  
12 worked for Defendants in a California location as non-exempt employees during the Class Period.

13 29. Plaintiff reserves the right under Rules of Court, rule 3.765, to amend or modify  
14 the class description(s) with greater specificity or further division into subclasses or limitation to  
15 particular issues.

16 30. This action has been brought and may be maintained as a class action pursuant to  
17 Code of Civil Procedure section 382 because there is a well-defined community of interest in the  
18 litigation and because the proposed classes are easily ascertained by Defendants' personnel and  
19 payroll records.

#### 20 **Numerosity**

21 31. The potential members of the class as defined are so numerous that joinder of all  
22 class members is impracticable. While the precise number of the Plaintiff Class is unknown,  
23 Plaintiff is informed and believes that Defendants have employed more than 40 non-exempt  
24 employees during the Class Period.

#### 25 **Commonality**

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

28 a. Whether Defendants failed to pay all wages, including minimum, regular,

and overtime wages earned and due to Plaintiff and Plaintiff Class;

- b. Whether Defendants failed and continue to fail to provide meal periods or compensation in lieu thereof to Class Members;
- c. Whether Defendants failed and continue to fail to authorize and permit Class Members to take rest periods or compensation in lieu thereof;
- d. Whether Defendants failed to furnish to Plaintiff and Class Members wage statements containing all information required by Labor Code section 226, subdivision (a);
- e. Whether Defendants failed to timely pay Plaintiff and former class members all wages due during and after their employment;
- f. Whether Defendants were required to reimburse Plaintiff and Class Members for the use of their personal vehicles in connection with the performance and execution of their job duties; and
- g. Whether Defendants engaged in unfair/unlawful business practices.

#### **Typicality**

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

#### **Adequacy of Representation**

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

#### **Superiority of Class Action**

35. Under the facts and circumstances set forth above, a class action is superior to any

1 other method available for the fair and efficient adjudication of the rights of each class member  
2 in as much as joinder of individual, relatively small claims of Class Members is not practical and  
3 if each employee were required to file an individual lawsuit, the corporate defendant would  
4 necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm  
5 the limited resources of each individual plaintiff. Requiring each Class Member to pursue an  
6 individual remedy would also discourage the assertion of lawful claims by employees fearful of  
7 retaliation and permanent damage to their careers at present and/or subsequent employment.  
8 Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the  
9 individual Class Members against Defendants herein further support class certification.

10 **FIRST CAUSE OF ACTION**

11 **Failure to Pay All Wages**

12 **(Lab. Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12)**

13 **(By Plaintiff against Defendant and All Doe Defendants)**

14 36. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,  
15 as if fully alleged.

16 37. Any employee receiving less than the legal minimum wage or legal overtime  
17 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees  
18 and costs of suit. (Lab. Code, § 1194, subd. (a).)

19 38. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum  
20 wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January  
21 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For  
22 employers who employed twenty-six (26) or more people from January 1, 2017 to December 31,  
23 2017, the minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From  
24 January 18, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars  
25 (\$11.00) per hour. From January 1, 2019 to December 31, 2019, the minimum wage rate in  
26 California was twelve dollars (\$12.00) per hour. Plaintiff is informed and believes Defendants  
27 employed more than twenty-six (26) employees.

28 39. Notwithstanding any other provision of the Labor Code, hourly minimum wage

1 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay  
2 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

3 40. In any action to recover payment of wages less than the minimum wage an  
4 employee shall be entitled to recover liquidated damages in an amount equal to the wages  
5 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

6 41. Any work in excess of eight (8) hours in any workday and any work in excess of  
7 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half  
8 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess  
9 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay  
10 for an employee. (Lab. Code, § 510, subd. (a).)

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

13 43. In case of a dispute over wages, the employer shall pay, without condition and  
14 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies  
15 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

16 44. At all relevant times herein, Plaintiff and Class Members were and are paid as non-  
17 exempt employees.

18 45. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and forty  
19 (40) hours per week. Defendants failed to pay Plaintiff and Plaintiff Class for all hours worked  
20 by failing to record actual hours worked, e.g., time spent working off-the-clock, including, during  
21 meal periods and picking up work related materials from Defendants' various job sites, among  
22 other things. As a consequence, Defendants failed to pay Plaintiff and Plaintiff Class all  
23 minimum, regular, overtime, and/or double-time wages for all hours worked, including hours in  
24 excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections,  
25 *inter alia*, 204, 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum,  
26 regular, overtime, and/or double-time compensation which they earned and accrued for four (4)  
27 years prior to filing this complaint, according to proof.

28 46. Additionally, Plaintiff and Plaintiff Class are entitled to liquidated damages,

attorneys' fees and costs pursuant to Labor Code section 1194 and Code of Civil Procedure section 1021.5, and prejudgment interest.

## **SECOND CAUSE OF ACTION**

### **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

**(Lab. Code, §§ 226.7, 512)**

**(By Plaintiff against Defendant and All Doe Defendants)**

47. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

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

49. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section. Plaintiff alleges Defendants failed to provide legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods. Specifically, Plaintiff and Class Members worked through their meal periods despite Defendants recording that a meal period was taken, or had their meal periods interrupted or shortened, among other things.

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

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

52. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked shifts

1 more than ten (10) hours in a workday and were regularly denied a legally compliant second meal  
2 period.

3 53. Pursuant to Labor Code section 226.7, Plaintiff individually and on behalf of the  
4 Plaintiff Class, request recovery of meal period compensation which they are owed beginning  
5 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties  
6 against the Defendants, and each of them, in a sum as provided by the Labor Code and/or other  
7 statutes. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law,  
8 Plaintiff requests the court award reasonable attorneys' fees and costs incurred by them in this  
9 action.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

#### 12 **(Lab. Code, § 226.7)**

#### 13 **(By Plaintiff against Defendant and All Doe Defendants)**

14 54. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,  
15 as if fully alleged.

16 55. Labor Code section 226.7 and the applicable Wage Order provide that employers  
17 authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time  
18 per four (4) work hours, or major fraction thereof.

19 56. Labor Code section 226.7, subdivision (b), provides that if an employer fails to  
20 provide and employee rest periods in accordance with this section, the employer shall pay the  
21 employee one (1) hour of pay at the employee's regular rate of compensation for each workday  
22 that the rest period is not provided. Plaintiff and Plaintiff Class consistently worked over four (4)  
23 hours per shift with no rest breaks, or otherwise had their rest breaks interrupted or shortened due  
24 to Defendants' uniform policies and practices.

25 57. Defendants failed to reasonably make available rest breaks to Plaintiff and Plaintiff  
26 Class throughout the Class Period due to their understaffing, workload, and demands.

27 58. Plaintiff and Plaintiff Class are entitled to damages in an amount equal to one (1)  
28 hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil

1 Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award  
2 reasonable attorneys' fees and costs incurred by them in this action.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Pay Wages of Terminated or Resigned Employees**

5 **(Lab. Code, §§ 201, 202, 203)**

6 **(By Plaintiff against Defendant and All Doe Defendants)**

7 59. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,  
8 as if fully alleged herein.

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

12 61. Labor Code section 201 provides that an employer is required to pay an employee  
13 whose employment is terminated by the employer all wages earned and unpaid immediately upon  
14 termination.

15 62. Labor Code section 202 requires an employer pay to an employee who quits his or  
16 her employment, all wages earned and unpaid no later than seventy-two (72) hours thereafter.

17 63. Labor Code section 203 provides that an employer who fails to pay all wages  
18 earned and due an employee who is discharged or who quits within the timeframe set forth in  
19 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at  
20 the same rate of pay until paid, but not more than thirty (30) days. In other words, the employer  
21 owes the employee his or her daily rate of pay at their regular rate of pay for each day the full  
22 amount of unpaid wages is not paid, for a penalty of up to thirty (30) days' wages.

23 Plaintiff and members of the Plaintiff Class who terminated employment within four (4)  
24 years of the filing of this complaint until the date of entry of judgment, without being paid the  
25 proper payments as described herein are entitled to thirty (30) days of pay at their regular rate of  
26 pay as waiting time penalties.

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Issue Itemized Wage Statement and Maintain Records**

3 **FAILURE TO ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

4 **(Lab. Code, §§ 226, 226.3, 1174, 1174.5)**

5 **(By Plaintiff against Defendant and All Doe Defendants)**

6 64. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,  
7 as if fully alleged herein.

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

12 66. Labor Code section 1174, subdivision (d), requires an employer to keep at a central  
13 location in California or at the plant or establishment at which the employee is employed, payroll  
14 records showing the hours worked daily, and the wages paid to each employee. Labor Code  
15 section 226, subdivision (a), requires an employer to provide employees—either as a detachable  
16 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are  
17 paid by personal check or cash—an accurate itemized wage statement in writing, including  
18 specified information, including, but not limited to: “(1) gross wages earned; (2) total hours  
19 worked . . . (5) net wages earned... and (9) all applicable hourly rates in effect during the pay  
20 period and the corresponding number of hours worked at each hourly rate by the employee.”

21 67. Labor Code section 226, subdivision (e), provides that if an employer knowingly  
22 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,  
23 the total hours worked by the employee and the applicable hourly overtime rates, causing the  
24 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty  
25 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent  
26 violation, up to four thousand dollars (\$4,000.00.) Plaintiff is informed and believes that  
27 Defendants willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

28 68. The IWC Wage Orders require that every employer shall keep accurate

1 information with respect to each employee, including, but not limited to, time records showing  
2 the total daily hours worked by each employee, the total hours worked in each payroll period, and  
3 applicable rates of pay. Plaintiff is informed and believes that Defendants willfully and  
4 intentionally failed to make and/or keep records which accurately reflect the hours worked by  
5 Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendants' records fail to  
6 include, *inter alia*: (1) actual hours worked; (2) total hours worked; (3) number of hours worked  
7 at each hourly rate; (4) gross wages earned; (5) net wages earned; and (6) premium wages earned  
8 per pay period.

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

15         70. For each employee suffering an injury as a result of Defendants' knowing and  
16 intentional failure to provide an accurate, itemized wage statement, the employee is entitled to  
17 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which  
18 a violation occurs, and one hundred dollars (\$100.00) per employee for each violation in a  
19 subsequent pay period.

20         71. Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
21 failure to keep accurate payroll records, as described above, violated Labor Code section 1174,  
22 subdivision (d), and section 226, subdivision (a), and the applicable Wage Order. Plaintiff intends  
23 on seeking penalties under Labor Code section 2699, subdivision (f)(2), Plaintiff and the Plaintiff  
24 Class are entitled to penalties of one hundred dollars (\$100.00) for the initial violation, and two  
25 hundred dollars (\$200.00) for each subsequent violation, for every pay period during which these  
26 records and information were not kept by Defendants.

27         72. Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
28 failure to keep and maintain accurate records and information and provide to Plaintiff and Class

Members accurate itemized wage statements, as described above, was knowing and intentional, and Plaintiff and Plaintiff Class are entitled to statutory penalties for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by law.

## **SIXTH CAUSE OF ACTION**

### **Indemnification for Expenditures or Losses on Losses in Discharge of Duties**

#### **(Lab. Code § 2802)**

#### **(By Plaintiff against Defendant and All Doe Defendants)**

73. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

74. Defendants failed to indemnify Plaintiff and Plaintiff Class for all necessary expenditures or losses incurred by Plaintiff and Plaintiff Class in-direct consequence of the discharge of their duties. Specifically, Defendants failed to indemnify Plaintiff and Plaintiff Class for expenditures they incurred on their behalf, including, but not limited to, maintaining their uniforms as well as safety gear as well as use of their personal vehicles in direct consequence of the discharge of their duties to Defendants.

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

## **SEVENTH CAUSE OF ACTION**

### **Unfair/Unlawful Business Practices**

#### **(Bus. & Prof. Code, §§ 17200 et seq.)**

#### **(By Plaintiff against Defendant and All Doe Defendants)**

76. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

77. Plaintiff brings this claim individually and on behalf of Class Members.

78. Business and Professions Code section 17200 ("UCL") prohibits unfair

1 competition in the form of any unlawful, unfair, or fraudulent business act or practice.

2 79. Business and Professions Code section 17204 allows “any person who has suffered  
3 injury in fact and has lost money or property as a result of such unfair competition” to prosecute  
4 a civil action for violation of the UCL.

5 80. Labor Code section 90.5, subdivision (a), states it is the public policy of California  
6 to vigorously enforce minimum labor standards in order to ensure employees are not required to  
7 work under substandard and unlawful conditions, and to protect employers who comply with the  
8 law from those who attempt to gain competitive advantage at the expense of their workers by  
9 failing to comply with minimum labor standards.

10 81. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)  
11 years prior to the filing of this complaint, Defendants have committed acts of unfair competition  
12 as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and  
13 fraudulent business practices and acts described in this complaint, including, but not limited to,  
14 violations of Labor Code sections 201, 202, 203, 204, 206, 226, 226.3, 226.7, 510, 512, 1174,  
15 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as other statutes.

16 82. The violations of these laws and regulations, as well as of fundamental California  
17 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of  
18 Business and Professions Code sections 17200 et seq.

19 83. As a result of these actions, Plaintiff, on information and belief, alleges that  
20 Defendants are able to unfairly compete with other comparable companies in the State of  
21 California in violation of Business and Professions Code sections 17000 et seq. and sections  
22 17200 et seq. Due to these unlawful, unfair, and/or fraudulent business practices, Defendants have  
23 gained a competitive advantage over other comparable companies doing business in the State of  
24 California.

25 84. The victims of these unlawful, unfair, and/or fraudulent business practices include,  
26 but are not limited to, Plaintiff, putative class members, competing painting contractors  
27 throughout the State of California, and the general public. Plaintiff is informed and believes, and  
28 thereon alleges, that Defendants performed the above-mentioned acts with the intent of gaining

1 an unfair competitive advantage and thereby injuring Plaintiff, putative class members, other  
2 competitors, and the general public.

3 85. Plaintiff's success in this action will enforce important rights affecting the public  
4 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf  
5 of himself.

6 86. Business and Professions Code sections 17203 provides that a court may make  
7 such orders or judgments as may be necessary to prevent the use or employment by any person  
8 of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate  
9 to prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and  
10 business practices alleged above.

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

18 88. Business and Professions Code section 17202 provides: "Notwithstanding section  
19 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,  
20 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled  
21 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and  
22 Professions Code section 17202.

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

26 90. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is  
27 a financial burden involved in pursuing this action. The action is seeking to vindicate a public  
28 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to

1 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to  
2 Code of Civil Procedure section 1021.5 and others.

3 **PRAYER FOR RELIEF**

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

- 5 1. That the Court determine that this action may be maintained as a class action under  
6 Code of Civil Procedure section 382;
- 7 2. The Court appoint Plaintiff as Class Representative;
- 8 3. The Court appoint Mahoney Law Group, APC as class counsel;
- 9 4. For compensatory and statutory damages;
- 10 5. For restitution of all monies due to Plaintiff and Plaintiff Class from the  
11 unlawful/unfair business practices of Defendant;
- 12 6. For injunctive relief;
- 13 7. For statutory and civil penalties according to proof;
- 14 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,  
15 subdivision (e), and section 1194; Code of Civil Procedure section 1021.5, and/or  
16 other applicable laws statutes; and
- 17 9. That the Court award such other and further relief as this Court may deem  
18 appropriate.

19  
20 Dated: May 8, 2020

**MAHONEY LAW GROUP, APC**

21  
22 By:

  
Kevin Mahoney, Esq.  
Berkeh Alemzadeh, Esq.  
Attorney for Plaintiff DAVID  
HERNANDEZ, as an individual and on  
behalf of all similarly situated employees

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Dated: May 8, 2020

By:

Kevin Mahoney, Esq.  
Berkeh Alemzadeh, Esq.  
Attorney for Plaintiff DAVID  
HERNANDEZFR, as an individual and on  
behalf of all similarly situated employees

# Exhibit A



Kevin Mahoney, Esq.  
(562) 590-5550 phone  
(562) 590-8400 facsimile  
kmahoney@mahoney-law.net

April 3, 2020

**Via Certified Electronic Mail**

LABOR AND WORKFORCE DEVELOPMENT AGENCY

[PAGAFilings@dir.ca.gov](mailto:PAGAFilings@dir.ca.gov)

**VIA U.S. MAIL & CERTIFIED MAIL# 7019 0700 0001 7488 6349**

***Return Receipt Requested***

BURDICK PAINTING.  
705 Nuttman Street  
Santa Clara, CA 95054

***Re: David Villagran Hernandez v. Burdick Painting, Inc.***

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO  
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency and Burdick Painting, Inc.

From: David Villagran Hernandez, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

**Factual Statement**

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. David Villagran Hernandez ("Mr. Hernandez" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

**Theories of Labor Code Violations and Remedies**

Burdick Painting, a California corporation (hereinafter "Employer") is a car wash. Mr. Hernandez began his employment with Employer in or around April 6, 2013 as an hourly non-exempt employee, at Employer's 705 Nuttman Street, Santa Clara, California location, where he remained employed until on or about November 2018 through approximately May 16, 2019.

Mr. Hernandez alleges that Employer violated various sections of the Labor Code,

including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1182.12, 1194 and 2802, by failing to provide Mr. Hernandez and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all wages owed, including failing to provide lawful meal and rest periods, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Mr. Hernandez and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Employer compensate Mr. Hernandez and other aggrieved employees for all hours worked. Specifically, Mr. Hernandez and other aggrieved employees regularly worked over eight (8) hours per day and forty (40) hours per week. Employer failed to pay Mr. Hernandez and other aggrieved employees for all hours worked by failing to record actual hours worked, e.g., time spent working off-the-clock, including, during meal periods and picking up work related materials from Employer's various job sites, among other things. As a consequence, Employer failed to pay Mr. Hernandez and other aggrieved employees all minimum, regular, overtime, and/or double-time wages for all hours worked, including hours in excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, inter alia, 204, 510, 1182.12, and 1194, the Mr. Hernandez and other aggrieved employees seek the payment of all minimum, regular, overtime, and/or double-time compensation which they earned and accrued for four (4) years prior to filing this complaint, according to proof.

Employer failed to authorize and/or permit Mr. Hernandez to take adequate meal or rest breaks in violation of the Labor Code. Specifically, Mr. Hernandez was not provided full thirty (30) minute uninterrupted meal periods prior to his (5<sup>th</sup>) fifth hour of work when he worked in excess of six (6) hours. Further, Mr. Hernandez's meal periods were routinely interrupted due to inadequate coverage and/or the requirements of his job duties. When employees were prevented from taking timely and uninterrupted meal periods, Employer failed to provide premium pay as compensation for the unlawful meal periods nor were Mr. Hernandez and aggrieved employees paid for the time, they actually worked during their meal period. As a result, of Employer's failure to provide premium pay, Employer failed provide Mr. Hernandez and other aggrieved employees with accurate wage statements.

Mr. Hernandez further alleges that he and other aggrieved employees often did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Hernandez and other aggrieved employees were generally precluded from taking rest periods due to Employers' failure to sufficiently staff shifts to provide relief and thereby allow Mr. Hernandez and other aggrieved employees the opportunity to take full and compliant rest breaks. When employees were prevented from taking timely, uninterrupted rest breaks, they did not receive premium pay for the missed rest breaks.

Mr. Hernandez alleges that he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

Mr. Hernandez and other aggrieved employees were required to pay for necessary business expenditures, for which Employer did not compensate them. Mr. Hernandez and other aggrieved employees were required to wear uniforms containing the company logo. As a result of their job duties, Mr. Hernandez and other aggrieved employees' uniforms were soiled with paint and/or chemicals. Mr. Hernandez had to bear the expense of laundering his uniform and did not receive any type of compensation from his employer. Furthermore, Employer required Mr. Hernandez and other aggrieved employees to utilize their vehicles for the purpose of transporting paint to various job sites. Employer's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Mr. Hernandez and other aggrieved employees is in violation of Labor Code 2802 and actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Hernandez and other aggrieved employees with complete and accurate wage statements showing the actual hours worked and premium wages earned per pay period. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

By failing to include on Mr. Hernandez's and other aggrieved employees' pay stubs, all rest and meal break premium wages, Employers failed to keep accurate payroll records and failed to provide Mr. Hernandez and other aggrieved employees with complete and accurate wage statements with the accurate number of hours worked, accurate rate of pay for each hour worked, accurate number of premium wage earned, accurate reimbursements owed, and accurate net and gross wages earned. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Hernandez becomes aware of additional compensation owed or losses incurred by Mr. Hernandez or by any other aggrieved employee of the Employer, Mr. Hernandez expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

**CONTINUED ON THE NEXT PAGE**

LABOR AND WORKFORCE DEVELOPMENT AGENCY

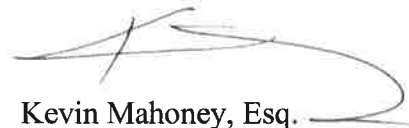
April 3, 2020

Page 4 of 4

Mr. Hernandez will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise Mahoney Law Group at the address below if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Mahoney Law Group, APC  
Kevin Mahoney  
249 E. Ocean Blvd., Suite 814  
Long Beach, CA 90802  
Tel: (562) 590-5550  
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.  
**MAHONEY LAW GROUP, APC**