

1 DAVID G. SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 CAROLINE TAHMASSIAN (SBN 285680)

4 caroline@spivaklaw.com

5 THE SPIVAK LAW FIRM

6 16530 Ventura Blvd, Suite 203

7 Encino, CA 91436

8 Telephone (818) 582-3086

9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,

11 ANDREW BURDICK, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 **(UNLIMITED JURISDICTION)**

15 ANDREW BURDICK, on behalf of himself,
16 and all others similarly situated, and as an
17 “aggrieved employee” on behalf of other
18 “aggrieved employees” under the Labor Code
19 Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 PEACH STATE ROOFING, INC., a Georgia
23 corporation; MARTIN KELLY, an individual;
24 CHRIS KELLY, and individual; and DOES 1
25 through 50, inclusive,

26 *Defendant(s).*

Case No.: 20STCV20397

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



1 Plaintiff ANDREW BURDICK (hereafter “Plaintiff”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants PEACH STATE
7 ROOFING, INC., MARTIN KELLY, CHRIS KELLY, and Does 1-50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages
11 and other related relief. These claims are based on Defendants’ alleged failures to (1) provide all
12 rest and meal periods, (2) pay all wages earned for all hours worked, (3) indemnify for all
13 business expenses, (4) fairly compete, (5) provide accurate written wage statements, and (6)
14 timely pay final wages upon termination of employment. Accordingly, Plaintiff now seeks to
15 recover unpaid wages and related relief through this class and representative action.

16 **PARTIES**

17 3. Plaintiff is 27-year-old man who resides in Corona, California. Defendants first
18 hired Plaintiff in or about December of 2018 to work in California as an hourly roofer,
19 technician and laborer. Defendants terminated Plaintiff’s employment in or about November of
20 2019 after he complained about Defendants’ failures to provide him with timely meal periods
21 and rest breaks.

22 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
23 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
24 of Labor Code Section 2699(c).

25 5. Defendant PEACH STATE ROOFING, INC. is a corporation organized under
26 the laws of Georgia and also a citizen of California based on Plaintiff’s information and belief.

27 6. Defendant MARTIN KELLY is an individual, a citizen of California based on
28 Plaintiff’s information and belief, and at all relevant times the owner, and an “officer,”
“director,” and “managing agent” of Defendant PEACH STATE ROOFING, INC. At all
relevant times, he directly or indirectly, or through an agent or any other person, employed or
exercised control over the wages, hours, or working conditions of the class members (defined



below) and Plaintiff.

7. Defendant CHRIS KELLY is an individual, a citizen of California based on Plaintiff's information and belief, and at all relevant times an "officer," "director," and "managing agent" of Defendant PEACH STATE ROOFING, INC. At all relevant times, he directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of the class members (defined below) and Plaintiff.

8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable California labor laws as alleged herein.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because



Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The class is defined as follows: All persons employed by Defendants in California as non-exempt, hourly employees, including roofers, technicians, laborers, and persons in other comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

15. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

16. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the class with all rest periods as required by section 11 of the Wage Order?

B. Whether Defendants failed to provide the class with all meal periods as required by section 10 of the Wage Order?

C. Whether Defendants failed to pay the class for all hours worked at the correct rates of pay?

D. Whether Defendants failed to indemnify the class for all business expenses?

E. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the class?

F. Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements?

G. Whether Defendants willfully failed to provide the class with timely final wages?



17. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

21. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of



California Labor Code §§ 226.7, 1198, and the Wage Order.

23. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

24. In relevant part, Section 11 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.

...

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided...

25. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or



1 recovery period in accordance with a state law, including, but not limited
2 to, an applicable statute or applicable regulation, standard, or order of the
3 Industrial Welfare Commission, the Occupational Safety and Health
4 Standards Board, or the Division of Occupational Safety and Health, the
5 employer shall pay the employee one additional hour of pay at the
6 employee's regular rate of compensation for each workday that the meal
7 or rest or recovery period is not provided.

8
9 26. Pursuant to the Wage Order, Plaintiff and the class were entitled to be provided
10 with net rest breaks of at least ten minutes for each four hour period of work, or major fraction
11 thereof.

12 27. Defendants failed to provide Plaintiff with any of the required rest breaks in
13 accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at
14 relevant times within the applicable limitations period, Defendants had a policy, practice, or a
15 lack of a policy which resulted in Defendants not providing the class with all rest breaks
16 required by California law.

17 28. Defendants failed to pay Plaintiff the additional wages required by California
18 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes
19 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
20 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
21 providing the class with additional wages for all rest breaks not provided to them as required by
22 California Labor Code § 226.7.

23 29. In relevant part, California Labor Code § 558.1 states:

24 (a) Any employer or other person acting on behalf of an employer, who violates,
25 or causes to be violated, any provision regulating minimum wages or hours and
26 days of work in any order of the Industrial Welfare Commission, or violates, or
27 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
28 liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an
employer" is limited to a natural person who is an owner, director, officer, or
managing agent of the employer, and the term "managing agent" has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

30. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the



1 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
2 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
3 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
4 caused the violations to the Labor Code and Wage Order described above.

5 31. Defendants Martin Kelly and Chris Kelly intentionally failed to provide all rest
6 breaks to Plaintiff and the Class Members as required by law. As a result, Defendants Martin
7 Kelly and Chris Kelly violated California Labor Code §§ 226.7 and 1198.

8 32. As a result of Defendants’ unlawful conduct, Plaintiff and the class have suffered
9 damages in amounts subject to proof to the extent they were not paid additional wages owed for
10 all rest breaks not provided to them.

11 33. By reason of the above, Plaintiff and the members of the class are entitled to
12 premium wages for workdays in which one or more rest breaks were not provided to them
13 pursuant to California Labor Code § 226.7.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **(Lab. Code §§ 226.7, 512, and 1198)**

17 **(By Plaintiff and the Class against all Defendants)**

18 34. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 35. At all relevant times during the applicable limitations period, Plaintiff and the
20 class have been employees of Defendants and entitled to the benefits and protections of
21 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

22 36. Labor Code § 1198 states,

23 “The maximum hours of work and the standard conditions of labor fixed
24 by the commission shall be the maximum hours of work and the standard
25 conditions of labor for employees. The employment of any employee for
26 longer hours than those fixed by the order or under conditions of labor
27 prohibited by the order is unlawful.”

28 37. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more
than five hours per day without providing the employee with a meal
period of not less than 30 minutes, except that if the total work period per
day of the employee is no more than six hours, the meal period may be
waived by mutual consent of both the employer and employee. An
employer may not employ an employee for a work period of more than



1 10 hours per day without providing the employee with a second meal
2 period of not less than 30 minutes, except that if the total hours worked is
3 no more than 12 hours, the second meal period may be waived by mutual
4 consent of the employer and the employee only if the first meal period
5 was not waived.”

6 38. In relevant part, Section 10 of the Wage Order states:

7 Meal Periods:

8 (A) No employer shall employ any person for a work period of more
9 than five (5) hours without a meal period of not less than 30
10 minutes, except that when a work period of not more than six (6)
11 hours will complete the day’s work the meal period may be
12 waived by mutual consent of the employer and the employee. (See
13 Labor Code Section 512.)

14 (B) An employer may not employ an employee for a work period of
15 more than ten (10) hours per day without providing the employee
16 with a second meal period of not less than 30 minutes, except that
17 if the total hours worked is no more than 12 hours, the second
18 meal period may be waived by mutual consent of employer and
19 employee only if the first meal period was not waived. (See Labor
20 Code Section 512.)

21 ...

22 (F) If an employer fails to provide an employee a meal period in
23 accordance with the applicable provisions of this order, the
24 employer shall pay the employee one (1) hour of pay at the
25 employee’s regular rate of compensation for each workday that
26 the meal period is not provided...

27 39. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
28 class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for
each day they worked five or more hours. Pursuant to California Labor Code § 512 and the
Wage Order, they were also entitled to a second 30-minute meal period when they worked more
than ten (10) hours in a workday.

40. During the relevant time period, Defendants failed to provide Plaintiff and the
Class Members with timely first meal periods in accordance with California Labor Code § 512
and the Wage Order. Defendants often failed to authorize Plaintiff and the Class Members to
take their first meal periods until they had already worked more than five (5) hours in a
workday. Defendants also failed to provide Plaintiff and the Class Members with a second meal



period when they worked more than ten (10) hours in a workday.

41. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the class with all timely meal periods required by California Labor Code § 512 and the Wage Order.

42. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

43. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

44. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.

45. Defendants Martin Kelly and Chris Kelly intentionally failed to provide all timely meal periods to Plaintiff and the Class Members as required by law. As a result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 226.7, 512, and 1198.

46. As a result of Defendants’ unlawful conduct, Plaintiff and the class have suffered



1 damages in amounts subject to proof to the extent they were not paid additional wages owed for
2 all meal periods not provided to them.

3 47. By reason of the above, Plaintiff and the members of the class are entitled to
4 premium wages for workdays in which one or more meal periods were not provided to them
5 pursuant to California Labor Code § 226.7.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED AT**

8 **THE CORRECT RATES OF PAY**

9 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

10 **(By Plaintiff and the Class against all Defendants)**

11 48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 49. At all relevant times during the applicable limitations period, Plaintiff and the
13 class have been employees of Defendants and entitled to the benefits and protections of
14 California Labor Code §§ 1194, 1197, and the Wage Order.

15 50. Section 2 of the applicable Wage Order defines “hours worked” as “the time
16 during which an employee is subject to the control of an employer, and includes all the time the
17 employee is suffered or permitted to work, whether or not required to do so.”

18 51. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
19 employees at least the minimum wage set forth therein for all hours worked, which consist of all
20 hours that an employer has actual or constructive knowledge that employees are working.

21 52. Labor Code § 1194 invalidates any agreement between an employer and an
22 employee to work for less than the minimum or overtime wages required under the applicable
23 Wage Order.

24 53. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
25 than the minimum wage required under the applicable Wage Order for all hours worked during
26 a payroll period.

27 54. Labor Code § 1198 makes it unlawful for an employer to employ an employee
28 under conditions that violate the Wage Order.

55. The provisions of the Labor Code require employers to pay non-exempt
employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including hours spent working “off-the-clock” (before punching in or after punching



1 out on a time clock) when the employer knew or reasonably should have known that employees
2 were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

3 46. In relevant part, Section 3 of the Wage Order states,

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to
6 employees 18 years of age or over and to employees 16 or
7 17 years of age who are not required by law to attend school
8 and are not otherwise prohibited by law from engaging in the
9 subject work. Such employees shall not be employed more
10 than eight (8) hours in any workday or more than 40 hours in
11 any workweek unless the employee receives one and one-half
12 (1 ½) times such employee's regular rate of pay for all hours
13 worked over 40 hours in the workweek. Eight (8) hours of
14 labor constitutes a day's work. Employment beyond eight (8)
15 hours in any workday or more than six (6) days in any
16 workweek is permissible provided the employee is
17 compensated for such overtime at not less than:

18 (a) One and one-half (1 ½) times the employee's regular rate
19 of pay for all hours worked in excess of eight (8) hours up to
20 and including 12 hours in any workday, and for the first eight
21 (8) hours worked on the seventh (7th) consecutive day of work
22 in a workweek.

23 56. In relevant part, California Labor Code § 510 states,

24 Any work in excess of eight hours in one workday and any work in
25 excess of 40 hours in any one workweek and the first eight hours worked
26 on the seventh day of work in any one workweek shall be compensated at
27 the rate of no less than one and one-half times the regular rate of pay for
28 an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an
employee. In addition, any work in excess of eight hours on any seventh
day of a workweek shall be compensated at the rate of no less than twice
the regular rate of pay of an employee.

57. At all relevant times, Defendants issued Plaintiff and Class Members their wages
on a biweekly basis. Defendants paid Plaintiff and Class Members two different pay rates. For
example, at the time of his termination, Defendants compensated Burdick at a rate of \$9.00
dollars for his travel time (time spent traveling from Defendants office to a job site and back
from the job site to the office) and at a rate of \$16.50 for non-travel time.



58. Defendants failed to compensate Plaintiff and Class Members for all travel time. Defendants did not compensate Plaintiff and Class Members for the first 30 minutes of their travel time from office to the job sites and for the first 30 minutes of their travel time from their job sites back to the office. Defendants further compensated Plaintiff and Class Members with a rate less than the applicable minimum wage for their travel time. For example, for the period of 10/06/2019 to 10/19/2019, Defendants reported 14.8 hours of regular “Travel Time” on Plaintiff’s wage statement. Defendants, however, paid Plaintiff only \$126.72 for such travel time ($\$126.72 / 14.8 \text{ hours} = \9.00 per hour). In October of 2019, the applicable hourly minimum wage in California was \$12 for employers with 26 or more employees and \$11 for employers with 25 or fewer employees.

59. Defendants also did not compensate Plaintiff and Class Members for the work they required them to perform at the office before traveling to their job sites and after they returned from their job sites at the end of each workday. These duties included, but were not limited to, loading and unloading the company trucks and attending safety meetings. Defendants further failed to compensate Plaintiff and Class Members with two (2) times the minimum wage even though they required them to provide their own tools as described below.

60. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’ failure to compensate Plaintiff and the class for all hours worked at the correct rates of pay.

61. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

62. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the



1 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
2 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
3 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
4 caused the violations to the Labor Code and Wage Order described above.

5 63. Defendants Martin Kelly and Chris Kelly intentionally failed to pay Plaintiff and
6 the Class Members for all hours worked at the correct rate of pay as required by law. As a
7 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 510, 1194,
8 1197, and 1198.

9 64. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class
10 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
11 the full amount of wages earned during each pay period during the applicable limitations period,
12 including minimum and overtime wages.

13 65. As a result of Defendants’ conduct, Plaintiff, on behalf of himself and the class,
14 seeks damages and/or restitution for unpaid wages which Defendants failed to pay them at the
15 rates set forth herein, interest thereon, costs of suit and reasonable attorney’s fees pursuant to
16 California Labor Code §§ 1194.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY**

19 **(Lab. Code §§ 1198 and 2802)**

20 **(By Plaintiff and the Class against all Defendants)**

21 66. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 67. At all relevant times during the applicable limitations period, Plaintiff and the
23 class have been entitled to the benefits and protections of California Labor Code and the Wage
24 Order.

25 68. Section 8 of Wage Order states,

26 (B) When the employer requires the use of tools or equipment or they are
27 necessary for the performance of a job, such tools and equipment shall be
28 provided and maintained by the employer, except that an employee whose wages
are at least two (2) times the minimum wage may provide and maintain hand
tools and equipment customarily required by the particular trade or craft in
conformity with Labor Code Section 2802.

69. Labor Code § 1198 makes it unlawful for an employer to employ an employee



under conditions that violate the Wage Order.

70. In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

71. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties, including use of a personal mobile telephone to communicate with co-workers, customers, and management for Defendants. Defendants also required Plaintiff and Class Members to purchase certain tools to perform their duties, including but not limited to, hammers and scissors. Defendants further required Plaintiff and Class Members to use their personal vehicles to drive to their job sites. Defendants, however, failed to reimburse them for mileage expenses and other that they incurred.

72. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’ failure to indemnify the class for the reasonable expenses they incurred in the course of performing their duties.

73. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

74. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.



75. Defendants Martin Kelly and Chris Kelly intentionally failed to reimburse Plaintiff and the Class Members for all reasonable business expenses as required by law. As a result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 2802 and 1198.

FIFTH CAUSE OF ACTION

(Lab. Code § 226)

77. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. Pursuant to California Labor Code § 226(a), Plaintiff and the class were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

81. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by



California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

82. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

83. As alleged herein, Defendants have failed to properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees and other requirements of California Labor Code § 226. Further, Defendants failed to state the earned meal and rest period premium wages and their business expenses on Plaintiff and Class Members’ itemized written wage statements. Additionally, Defendants failed to state the “travel Time” hourly rates, travel time hours, travel times wages earned, and the correct name of the employer on Plaintiff and Class Members’ wage statements. As a result, Defendants have violated California Labor Code § 226.

84. Defendants’ failure to provide Plaintiff and the class with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the class with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

85. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and



1 days of work in any order of the Industrial Welfare Commission, or violates, or
2 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
3 liable as the employer for such violation.

4 (b) For purposes of this section, the term “other person acting on behalf of an
5 employer” is limited to a natural person who is an owner, director, officer, or
6 managing agent of the employer, and the term “managing agent” has the same
7 meaning as in subdivision (b) of § 3294 of the Civil Code.

8 86. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
9 Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the
10 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
11 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
12 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
13 caused the violations to the Labor Code and Wage Order described above.

14 87. Defendants Martin Kelly and Chris Kelly intentionally failed to provide Plaintiff
15 and the Class Members with accurate and complete wage statements as required by law. As a
16 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code § 226.

17 88. As a result of being provided with inaccurate wage statements by Defendants,
18 Plaintiff and the class have suffered injury. Their legal rights to receive accurate wage
19 statements were violated and they were misled about the amount of wages they had actually
20 earned and were owed. In addition, the absence of accurate information on their wage
21 statements prevented immediate challenges to Defendants’ unlawful pay practices, has required
22 discovery and mathematical computations to determine the amounts of wages owed, has caused
23 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
24 submission of inaccurate information about wages to state and federal government agencies.
25 Further, Plaintiff and the class were not able to ascertain from the wage statements whether
26 Defendants complied with their obligations under California Labor Code § 226(a).

27 89. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to
28 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for
each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an
aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to
an award of costs and reasonable attorneys’ fees.



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SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

90. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

91. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

92. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

93. By failing to pay earned minimum, overtime, and premium wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

94. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

95. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

96. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.



1 97. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
2 Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the
3 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
4 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
5 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
6 caused the violations to the Labor Code and Wage Order described above.

7 98. Defendants Martin Kelly and Chris Kelly intentionally failed to timely pay
8 Plaintiff and the Class Members their final wages as required by law. As a result, Defendants
9 Martin Kelly and Chris Kelly violated California Labor Code § 203.

10 99. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
11 himself and the Class Members, in amounts subject to proof not to exceed 30 days of waiting
12 time penalties for each Class Member.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

16 **(By Plaintiff and the Class against all Defendants)**

17 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 101. At all relevant times during the applicable limitations period, Plaintiff and the
19 class have been employees of Defendants and entitled to the benefits and protections of the
20 Business and Professions Code §§ 17200, *et seq.*

21 102. The unlawful conduct of Defendants alleged herein amount to and constitutes
22 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
23 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
24 unfairly gained a competitive advantage over other comparable companies doing business in
25 California that comply with their legal obligations to compensate employees for all earned
26 wages.

27 103. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and the
28 class have suffered injuries in fact and lost money or property. Plaintiff and the class were
deprived of wages for all rest and meal periods not provided to them, for hours worked for
which they did not receive wages at the correct rates of pay and for unpaid wages resulting from
not being provided with accurate wage statements. Defendants also failed to reimburse Plaintiff



and the Class Members for the business expenses they incurred during their employment.

104. Pursuant to California Business & Professions Code § 17203, Plaintiff and the class are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

105. Plaintiff and the class are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

106. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

107. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning April 2, 2019 and ending on the date that final judgment is entered in this action.

108. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.



(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

109. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

110. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

111. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per



1 pay period (regardless of whether the initial violations were intentionally committed) (penalty
2 amounts established by California Labor Code § 1197.1).

3 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
4 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
5 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
6 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

7 113. Plaintiff has complied with the procedures for bringing suit specified in
8 California Labor Code § 2699.3. By letter dated April 2, 2020, Plaintiff filed written notice
9 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
10 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
11 to have been violated, including the facts and theories to support the alleged violations. A true
12 and correct copy of the notice to the LWDA dated April 2, 2020 is attached as Exhibit A.
13 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
14 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
15 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
does not intend to investigate these allegations.

16 114. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
17 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
18 connection with their claims for civil penalties.

19 **PRAYER FOR RELIEF**

20 115. WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and
21 judgment against Defendants as follows:

22 A. An order that the action be certified as a class action with respect to
23 Plaintiff’s claims for violations of California law;

24 B. An order that Plaintiff be appointed class representative;

25 C. An order that counsel for Plaintiff be appointed class counsel;

26 D. Unpaid wages;

27 E. Statutory penalties;

28 F. Civil penalties;

G. Declaratory and injunctive relief;



- 1 H. Actual damages;
2 I. Restitution;
3 J. Pre-judgement interest;
4 K. Reasonable attorneys' fees;
5 L. Cost of suits; and
6 M. Such other relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury
9 trial on all issues so triable.

10 Respectfully submitted,

11 THE SPIVAK LAW FIRM

12 Dated: June 12, 2020

13 By 
14 DAVID SPIVAK, Attorney for Plaintiff,
15 ANDREW BURDICK, and all others similarly
16 situated
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EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL ***

April 2, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Andrew Burdick / PSR*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Andrew Burdick (hereafter "Burdick") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including roofers, technicians, laborers, and in similar positions (hereafter referred to as "Aggrieved Employees,") by Peach State Roofing, Inc., a Georgia corporation, Martin Kelly, an individual, and Chris Kelly, an individual (hereafter collectively referred to as "PSR") of violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 226, 510, 512, 1102.5, 1194, 1197, 1198, and 2802.

At all relevant times, PSR has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Burdick and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter "the Wage Order"), paragraph 2.H, and "aggrieved employees" within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

Statement of Facts

In or about December of 2018, PSR first employed Burdick to work in California as a **hourly** roofer, technician and laborer. PSR terminated Burdick's employment in or about November 2019 after he complained about PSR's failure to provide him with timely meal periods and rest breaks.

At all relevant times, PSR issued Burdick and other Aggrieved Employees their wages on a biweekly basis. PSR paid Burdick and other Aggrieved Employees two different pay rates. For example, at the time of his termination, PSR compensated Burdick at a rate of \$9.00 dollars for his travel time (time spent traveling from PSR office to a job site and back from the job site to the office) and at a rate of \$16.50 for non-travel time

PSR failed to compensate Burdick and the Aggrieved Employees for all travel time. PSR did not compensate Burdick and the Aggrieved Employees for the first 30 minutes of their travel time from office to the job sites and for the first 30 minutes of their travel time from their job sites back to the office. PSR further compensated Burdick and the Aggrieved Employees with a rate less than the applicable minimum wage for their travel time. For example, for the period of 10/06/2019 to 10/19/2019, PSR reported 14.8 hours of regular "Travel Time" on Burdick's wage statement. PSR, however, paid Burdick only \$126.72 for these such travel time ($\$126.72 / 14.8 \text{ hours} = \9.00 per hour). In October of 2019, the applicable hourly minimum wage in California was \$12 for employers with 26 or more employees and \$11 for employers with 25 or fewer employees.

PSR also did not compensate Burdick or the other Aggrieved Employees for the work it required them to perform at its office before traveling to their job sites and after they returned from their job sites at the end of each workday. These duties included, but were not limited to, loading and unloading the company trucks and attending safety meetings. PSR further failed to compensate Burdick and other Aggrieved Employees with two (2) times the minimum wage even though it required them to provide their own tools as described below.

PSR required Burdick and other Aggrieved Employees to incur certain business expenses in the course of performing their duties, including use of a personal mobile telephone to communicate with co-workers, customers, and management for PSR. PSR also required Burdick and the Aggrieved Employees to purchase certain tools to perform their duties, including but not limited to, hammers and scissors. PSR further required Burdick and other Aggrieved Employees to use their personal vehicles to drive to their job sites. PSR, however, failed to reimburse them for mileage expenses that they incurred.

At all relevant times, PSR failed to provide Burdick and the Aggrieved Employees with all timely rest and meal periods. PSR failed to provide Burdick and the Aggrieved Employees with timely first meal periods. PSR often failed to authorize Burdick and the Aggrieved Employees to take their first meal periods until they had already worked more than five (5) hours in a workday. Further, PSR failed to provide them with a second meal period when they worked more than 10 hours in a workday. PSR also never provided Burdick and the Aggrieved Employees with their ten-minute rest breaks. PSR failed to pay premium wages for days on which it failed to provide Burdick and the Aggrieved Employees with their timely rest and/or meal periods.

Finally, PSR failed to provide Burdick and other Aggrieved Employees with accurate itemized wage statement that set forth all the information required by Labor Code section 226. PSR failed to state the “travel Time” hourly rates, travel time hours, travel times wages earned, and the correct name of the employer on Burdick and the Aggrieved Employees’ wage statements.

For the reasons herein, Burdick alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) PSR failed to provide Burdick and other Aggrieved Employees with all rest breaks and meal periods;
- b) PSR failed to compensate Burdick and other Aggrieved Employees at one hour’s pay for each day in which they were not provided the rest breaks required by law;

- c) PSR failed to compensate Burdick and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) PSR failed to compensate Burdick and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) PSR failed to indemnify Burdick and other Aggrieved Employees for all business expenses;
- f) PSR failed to provide Burdick and other Aggrieved Employees with accurate wage statements; and
- g) PSR failed to timely pay Burdick and other Aggrieved Employees all earned and unpaid wages during their employment at PSR and at the time such employment ended.

Accordingly, Burdick now seeks civil penalties on behalf of himself and other Aggrieved Employees based on PSR's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the on-site occupations of construction, including but not limited to work involving alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq.; drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis[.]" § 1. At all relevant times

during the applicable limitations period, PSR provided roofing solutions to its customers in their re-roofing or new construction projects. Accordingly, Burdick and other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

In relevant part, Section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.

...

- (F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, 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 relevant part, Section 11 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of

ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

...

- (C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.
- (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's

regular rate of compensation for each work day that the meal or rest period is not provided.

PSR has intentionally and improperly failed to provide all timely rest breaks and/or meal periods free from any work or duties to Burdick and other Aggrieved Employees as required by law. In failing to do so, PSR violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states that every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period.

In relevant part, Section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

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

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, PSR failed to compensate Burdick and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Section 8 of Wage Order states,

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

As describe above, during the applicable limitations period, PSR required Burdick and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay Two Times The Minimum Wage
(Lab. Code §1198)

Section 8 of Wage Order states,

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

As described above, PSR required Burdick and other Aggrieved Employees to provide their own tools to perform their duties. It also failed to pay them at least two (2) times the minimum wage. Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, PSR violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. PSR also failed to include all applicable hourly rates of pay and the name of the legal entity that is the employer on their wage statements.

Accordingly, Burdick seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of PSR's failures to pay Burdick and the Aggrieved Employees within the time periods set by California Labor Code § 204, PSR failed to timely pay all wages due during employment.

Accordingly, Burdick seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the

date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Burdick and other Aggrieved Employees as set forth above, PSR is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Burdick seeks civil penalties from PSR as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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Retaliation
(Lab. Code § 98.6)

A person shall not discharge an employee because the employee has filed a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner or made a written or oral complaint that he or she is owed unpaid wages. Cal.Lab.Code § 98.6(a).

Burdick complained about PSR's failure to provide him with timely meal and rest periods. PSR terminated Burdick for objecting to conduct that violated the California Labor Code. This is a clear violation of California Labor Code § 98.6(a).

Burdick seeks civil penalties under California Labor Code § 98.6(b)(3) in an amount not to exceed \$10,000 for each violation by PSR of California Labor Code § 98.6(a), as well as attorney's fees and costs under Labor Code § 2699(g).

Retaliation
(Lab. Code § 1102.5)

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. Cal.Lab.Code § 1102.5(b).

Further, an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or

noncompliance with a local, state, or federal rule or regulation. Cal.Lab.Code § 1102.5(c).

PSR terminated Burdick for objecting to his supervisors for complaining about and refusing to participate in a conduct that violated the California Labor Code. This is a clear violation of California Labor Code § § 1102.5(b) and 1102.5(c).

Burdick seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by PSR of California Labor Code §§ 1102.5(b) and 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g).

Individual Liability
(Lab. Code § 558.1)

In relevant part, Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Martin Kelly and Chris Kelly were "officers," "directors," and "managing agents" of Peach State Roofing, Inc. Furthermore, at all relevant times, Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of the Aggrieved Employees and caused the Labor Code violations described above.

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

Encls. as stated

cc: Andrew Burdick

Walter Haines, Esq.

Peach State Roofing, Inc.

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com

Martin Kelly

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com

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LWDA / PSR

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Chris Kelly

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com