

Kevin Mahoney, Esq. (SBN: 235367)
kmahoney@mahoney-law.net
John A. Young (SBN: 299809)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: 562-590-5550
Facsimile No.: 562-590-8400

Attorneys for Plaintiff RAFAEL MARQUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

RAFAEL MARQUEZ,

Plaintiff,

v.

HIXSON METAL FINISHING, a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 30-2020-01161559-CU-OE-CXC

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and
6. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

Assigned for all purposes to:

Judge William Cluster

Dept: CX104

1 Plaintiff RAFAEL MARQUEZ (“Plaintiff” or “Mr. Marquez”) complains and alleges as
2 follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
6 Defendant HIXSON METAL FINISHING, (“Defendant”). The term “RELEVANT TIME
7 PERIOD” or “TIME PERIOD” is defined as one (1) year prior to the filing of the complaint.
8 Plaintiff reserves the right to amend this complaint to reflect a different “Time Period” as further
9 discovery is conducted.

10 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
11 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
12 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
13 rest periods or premium compensation in lieu thereof; (4) failure to provide accurate itemized
14 wage statements; (5) failure to reimburse for necessary business expenses; and (6) failure to pay
15 wages due upon termination of employment.

16 3. At all relevant times herein, Defendant has consistently maintained and enforced
17 the following unlawful policies and practices against Plaintiff:

- 18 (a) Willfully refusing to pay all hours worked, including both regular and overtime
19 wages;
20 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
21 lieu thereof;
22 (c) Willfully refusing to permit rest periods or providing compensation in lieu
23 thereof;
24 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
25 wages; and
26 (e) Willingly refusing to reimburse necessary business expenses; and
27 (f) Willfully refusing to pay all wages due upon separation of employment;

28 / / /

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

5. Venue is proper in the County of Orange because Defendant, HIXSON METAL FINISHING, transacts business in this county, the obligations and liability arise in this county, and work performed by Plaintiff that forms the subject of this action occurred in this county.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

Plaintiff

Defendant

-3-

1 California, and is and/or was the employer of Plaintiff and similarly situated employees during
2 the Relevant Time Period. Defendant provides metal finishing services for the military, aerospace,
3 and commercial aircraft industry throughout California, including Orange County, where Plaintiff
4 was employed.

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

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

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

24 **PAGA ADMINISTRATIVE PREREQUISITE**

25 13. This complaint, Plaintiff brings this case as a representative action seeking
26 penalties for the State of California in a representative capacity, as provided by the Private
27 Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee was
28 employed by Defendant and did not receive all wages due, was not paid regular wage, was not

1 paid overtime, was not provided accurate wage statements, was not reimbursed for necessary
2 expenditures, and was not able to take lawful meal and rest breaks or receive premium
3 compensation in lieu thereof.

4 14. Prior to filing this complaint on June 29, 2020, Plaintiff gave written notice by
5 certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
6 Defendant of the specified provisions alleged to have been violated, including the facts and
7 theories to support the alleged violation as required by Labor Code section 2699.3. A true and
8 correct copy of Plaintiff’s original letter sent to the LWDA is attached hereto as “Exhibit A.”

9 15. More than 65 days have passed since Plaintiff submitted his June 29, 2020, notice
10 to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA have
11 not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further
12 has received no notice of Defendant’s intent to cure any of the alleged violations. Therefore,
13 Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his June
14 29, 2020, PAGA notice.

15 **FACTUAL ALLEGATIONS**

16 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
17 employees the benefits due under California’s wage and hour laws for work performed in
18 California. Defendant wrongfully refused to pay Plaintiff and the Aggrieved Employees regular
19 wages, overtime compensation, meal and rest break premiums, and other statutory benefits
20 mandated by California.

21 17. Throughout the Relevant Time Period, Defendant employed Plaintiff and the
22 Aggrieved Employees in non-exempt positions throughout its California locations. Plaintiff and
23 Aggrieved Employees were employed by Defendant in positions that are paid at an hourly rate
24 less than twice that of the state minimum wage and remain under the direct control and
25 supervision of Defendant. Accordingly, these positions remain non-exempt from California’s
26 wage and hour laws yet Defendant fails to pay overtime, provide meal and rest breaks and
27 otherwise pay all wages due to these non-exempt employees as required by law.

28 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant’s

1 policies and practices described herein are common across each of Defendant's locations within
2 the State of California.

3 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals
5 who were knowledgeable about California's wage and hour laws, employment and personnel
6 practices, and the requirements of California law.

7 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
8 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for
9 all hours worked, including minimum, regular, and overtime wages, and that they were not
10 receiving all wages earned for work that was required to be performed. In violation of the Labor
11 Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved Employees earned
12 wages by failing compensate Plaintiff and Aggrieved Employees the mandatory minimum wage.
13 Defendant also failed to pay Plaintiff and Aggrieved Employees at the requisite over and double
14 time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday.
15 Specifically, Plaintiff and Aggrieved Employees were obligated by Defendant to work off-the-
16 clock after being clocked out for their meal period or less than the mandatory minimum wage
17 when they were obligated to complete work such as assisting painters, painting, sanding, moving
18 supplies and parts, amongst other responsibilities.

19 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
20 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required
21 meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
22 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
23 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
24 of not providing proper meal periods. Plaintiff and Aggrieved Employees missed their meal
25 periods, took them late, or had them interrupted by Defendant who required Aggrieved
26 Employees to attend to painters, or perform other work-related tasks. Defendant also had a
27 pattern, practice, and policy of not providing second meal periods. As a result of Defendant's
28 daily work requirements, demands, and unlawful policies, Plaintiff and Aggrieved Employees did

1 not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and
2 Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted 30-
3 minute off-duty meal period.

4 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
5 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all paid
6 rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
7 regular rate of pay when a rest period was missed, interrupted, or shortened. In violation of the
8 Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing
9 paid rest periods. Specifically, Defendant failed to implement a rest break policy and Defendant
10 did not inform Plaintiff and Aggrieved Employees when they were entitled to breaks and or
11 prioritized work responsibilities over providing Plaintiff and Aggrieved Employees their
12 mandatory rest breaks. As a result of Defendant's daily work requirements, demands, and failure
13 to implement a rest break policy, Plaintiff and Aggrieved Employees did not receive all paid rest
14 periods or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees'
15 regular rate of pay when a paid rest period was missed, truncated, or interrupted.

16 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
17 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
18 wage statements that accurately showed their actual hours worked, total hours worked, number
19 of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per
20 pay period in accordance with California law. In violation of the Labor Code, Plaintiff and
21 Aggrieved Employees were not provided with accurate itemized wage statements showing their
22 rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the
23 total hours work per pay period.

24 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
25 or should have known that Plaintiff and Aggrieved Employees were entitled to reimbursement
26 for necessary business expenditures. Defendant required Plaintiff and Aggrieved Employees to
27 utilize personal cell phones to communicate with Defendant regarding work responsibilities. In
28 violation of the Labor Code, Defendant failed to reimburse Plaintiff and Aggrieved Employees

1 for expenses pertaining to the work-related use of their personal cell phones.

2 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
3 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
4 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
5 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
6 time periods, upon separation of employment.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
9 **OVERTIME**

10 **(Plaintiff Against All Defendants)**

11 26. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
12 complaint as if fully set forth herein.

13 27. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
14 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
15 minimum wage for all hours worked and overtime premium for hours worked in excess of over
16 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant.
17 Defendant failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
18 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
19 Defendant. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner
20 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
21 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
22 forty (40) hours per week. As such, Plaintiff and Aggrieved Employees seek overtime in an
23 amount according to proof, which they earned and accrued one (1) year prior to filing this
24 complaint, according to proof, as part of the civil penalty pursuant to Labor Code section 558,
25 subdivision (a).

26 28. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
27 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
28 Aggrieved Employees were denied proper wages as a result of Defendant's policy of having

1 Plaintiff and Aggrieved Employees work before clocking in and/or after clocking out and failing
2 to compensate Plaintiff and Aggrieved Employees when they worked through meal breaks off-
3 the-clock. As such, Defendant failed to compensate Plaintiff and Aggrieved Employees for all
4 hours worked at the proper rate of pay pursuant to Labor Code section 510.

5 29. Since the LWDA has not indicated that it will be investigating more than 65 days
6 since Plaintiff provided notice, and because Defendant took no corrective action to remedy the
7 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
8 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
9 the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each
10 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
11 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

12 30. Plaintiff is informed and believes that Defendant has violated, and continues to
13 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
14 minimum wages and overtime.

15 31. Plaintiff, as a personal representative of the general public, will and does seek to
16 recover any and all penalties for each and every violation shown to exist or to have occurred
17 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
18 otherwise only available to public agency enforcement actions. Funds recovered will be
19 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
20 reimbursed to the LWDA.

21 32. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
22 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
23 interest.

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR** 26 **PREMIUM COMPENSATION IN LIEU THEREOF**

27 **(Plaintiff against All Defendants)**

28 33. Plaintiff realleges and incorporates by reference all preceding paragraphs as if

1 fully set forth herein.

2 34. Labor Code sections 226.7 and 512 and IWC Wage Order 16-2001, Sect. 9
3 provides that no employer shall employ any person for a work period of more than five (5) hours
4 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes
5 or employ any person for a work period of more than ten (10) hours without a second meal period
6 of not less than thirty (30) minutes.

7 35. Labor Code section 226.7 provides that if an employer fails to provide an
8 employee a meal period in accordance with this section, the employer shall pay the employee one
9 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
10 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
11 legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not
12 relieving employees from all work duties during meal periods thereby preventing employees from
13 taking legally compliant meal periods.

14 36. Industrial Welfare Commission (IWC) Wage Order No. 16-2001 (Wage Order 16)
15 section 11(A) states, "Unless the employee is relieved of all duty during a 30-minute meal period,
16 the meal period shall be considered an "on duty" meal period and counted as time worked. An
17 "on duty" meal period shall be permitted only when the nature of the work prevents an employee
18 from being relieved of all duty and when by written agreement between the parties an on-the-job
19 paid meal period is agreed to. The written agreement shall state that the employee may, in writing,
20 revoke the agreement at any time."

21 37. The burden to prove that a meal or rest period violation has occurred normally
22 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (238 Cal. App. 4th 1138,
23 1159-60 (2015)), where an employer fails to keep accurate records of meal and rest periods, a
24 presumption of meal and rest period violations is created, shifting the burden to the employer to
25 prove that meal and rest period violations did not occur.

26 38. Defendant failed to schedule non-exempt employees adequately to reasonably
27 ensure Plaintiff and Aggrieved Employees could take and/or receive such meal periods within the
28 statutory timeframe. Defendant denied Plaintiff and Aggrieved Employees duty-free meal

1 periods, as a result, Plaintiff and Aggrieved Employees were often forced to forego meal periods
2 and/or work during their meal periods, attending to painters or completing other work-related
3 tasks. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff
4 and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and other
5 regulations and statutes.

6 39. Defendant failed to keep accurate records of the meal periods taken by Plaintiff
7 and Aggrieved Employees.

8 40. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
9 than five (5) hours in a workday.

10 41. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
11 worked more than ten (10) hours in a workday.

12 42. At all times relevant hereto, Defendant, failed offer or to schedule non-exempt
13 positions in a manner so as to reasonably provide meal and/or work free meal period as required
14 by Labor Code sections 226.7 and 512.

15 43. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
16 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
17 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
18 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
19 ascertained according to proof at trial.

20 44. Further, Defendant's failure to maintain accurate records of the meal periods taken
21 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
22 and shifts the burden to Defendant to prove they did not occur.

23 45. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
24 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
25 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
26 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
27 by the Labor Code and/or other statutes.

28 46. Since the LWDA has not indicated that it will be investigating and 65 days have

1 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy
2 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
3 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
4 the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each
5 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
6 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

7 47. Plaintiff is informed and believes that Defendant has violated and continues to
8 violate provisions of the Labor Code and applicable Wage orders related to the payment of
9 minimum wages, including overtime.

10 48. Plaintiff, as a personal representative of the general public, will and does seek to
11 recover any and all penalties for each and every violation shown to exist or to have occurred
12 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
13 otherwise only available to public agency enforcement actions. Funds recovered will be
14 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
15 reimbursed to the LWDA.

16 49. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
17 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
20 **PREMIUM COMPENSATION IN LIEU THEREOF**

21 **(Plaintiff against All Defendants)**

22 50. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
23 preceding paragraphs of this complaint as if fully set forth herein.

24 51. Labor Code section 226.7 provides that employers authorize and permit all
25 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

26 52. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
27 provide an employee rest periods in accordance with this section, the employer shall pay the
28 employee one (1) hour of pay at the employee's regular rate of compensation for each workday

1 that the rest period is not provided.

2 53. Defendant, and each of them, failed and or refused to implement a relief system
3 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
4 periods. Defendant denied Plaintiff and Aggrieved Employees duty free rest periods by
5 interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions,
6 Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and
7 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

8 54. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
9 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
10 together in violation of Labor Code section 226.7 and 512.

11 55. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
12 Aggrieved Employees.

13 56. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
14 more than four (4) hours in a workday.

15 57. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
16 and Aggrieved Employees as a result of their routes scheduled by Defendant, Plaintiff and
17 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
18 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
19 ascertained according to proof at trial.

20 58. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure
21 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of
22 requiring employees to work through their rest periods without receiving compensation in lieu
23 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
24 satisfied all prerequisites to serve as a representative of the general public to enforce California's
25 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

26 59. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
27 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
28 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well

1 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
2 by the Labor Code and/or other statutes. Plaintiff, as a representative of the people of the State of
3 California, will seek any and all penalties otherwise capable of being collected by the Labor
4 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
5 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
6 alleged violation of the following provisions: 226.7 and 512.

7 60. Plaintiff, as a personal representative of the general public, will and does seek to
8 recover any and all penalties for each and every violation shown to exist or to have occurred
9 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
10 otherwise only available to public agency enforcement actions. Funds recovered will be
11 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
12 reimbursed to the LWDA.

13 61. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
14 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED** 17 **WAGE STATEMENTS**

18 **(Plaintiff against All Defendants)**

19 62. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
20 preceding paragraphs of this complaint as if fully set forth herein.

21 63. Labor Code section 226, subdivision (a), states in pertinent part that, "every
22 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
23 employees, either as a detachable part of the check, draft, or voucher paying the employee's
24 wages, or separately when wages are paid by personal check or cash, an accurate itemized
25 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
26 . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
27 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
28 only the last four digits of his or her social security number or an employee identification number

1 other than a social security number; (8) the name and address of the legal entity that is the
2 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
3 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

4 64. Defendant knowingly and intentionally failed to provide timely and accurate
5 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
6 section 226, subdivision (a), by failing to record the accurate number of hours worked, the
7 accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the
8 accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
9 Employees.

10 65. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
11 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
12 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
13 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

14 66. Plaintiff, as a personal representative of the general public, will and does seek to
15 recover any and all penalties for each and every violation shown to exist or to have occurred
16 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
17 otherwise only available to public agency enforcement actions. Funds recovered will be
18 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
19 reimbursed to the LWDA.

20 67. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
21 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

22 **FIFTH CAUSE OF ACTION**

23 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE**

24 **NECESSARY BUSINESS EXPENDITURES**

25 **(Plaintiff against All Defendants)**

26 68. Plaintiff realleges and incorporates by reference the allegations in the preceding
27 paragraphs.
28

69. Labor Code section 2802 states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...."

70. Plaintiff and similarly-aggrieved employees were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties.

71. Defendant knowingly, willingly, and intentionally attempted to offset the cost of doing business on Plaintiff and similarly-aggrieved employees.

72. Defendant had a corporate practice and policy of requiring Plaintiff and similarly-aggrieved employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures, specifically by requiring Plaintiff and Aggrieved Employees to utilize their personal cell phone for work-related purposes.

73. Accordingly, Plaintiff and similarly-aggrieved employees are entitled to civil penalties in accordance with PAGA, which shall also include all reasonable costs, including, but not limited to, attorneys' fees and interest.

SIXTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON

TERMINATION OF EMPLOYMENT

(Plaintiff against All Defendants)

74. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

75. Plaintiff and certain members of the Aggrieved Employees who ended their employment with Defendant during the Relevant Time Period, were entitled to be promptly paid both minimum wage and lawful overtime compensation and other premiums, as required by Labor Code sections 201 and 203.

76. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as well as pay both minimum and overtime compensation owed for work performed for Defendant.

1 77. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
2 with standing to bring an action under the PAGA and has suffered injury as to one or more
3 violations committed by Defendant. Plaintiff has satisfied all prerequisites to serve as a
4 representative of the general public to enforce California's labor laws, and the penalty provisions
5 identified in Labor Code section 2699.5.

6 78. Plaintiff, as a representative of the people of the State of California, will seek any
7 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
8 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
9 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
10 201-203, 226, 226.7, 510, 512, 1174, and 1194.

11 79. Plaintiff, as a personal representative of the general public, will and does seek to
12 recover any and all penalties for each and every violation shown to exist or to have occurred
13 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
14 otherwise only available to public agency enforcement actions. Funds recovered will be
15 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
16 reimbursed to the LWDA.

17 80. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
18 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
86

7
8
9
10
11
12
13
14
15
16
17
18

EXHIBIT A



John A. Young
(562) 590-5550 phone
(562) 590-8400 facsimile
jyoung@mahoney-law.net

June 29, 2020

VIA ELECTRONIC FILLING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

Via Certified Mail # 7019 0700 0001 7488 7179

Return Receipt Requested

Hixson Metal Finishing

ATTN: Dale W. Young, Jr.

829 Production Place

Newport Beach, CA 92663

Re: *Rafael Marquez v. Hixson Metal Finishing*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 et. seq.**

To: California Labor and Workforce Development Agency and Hixson Metal Finishing

From: Rafael Marquez, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

I. FACTUAL STATEMENT

Please note that the firm, Mahoney Law Group, APC, represents the interests of Rafael Marquez ("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 section 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

Hixson Metal Finishing ("Employer") is a metal finishing company that provides their services throughout California. Employee alleges Employer violated various sections of the Labor Code, including, but not limited, to sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, and 2802, by failing to provide Employee and all other aggrieved employees all wages for all hours worked, failure to pay overtime wages, failure to authorize and permit rest periods or premium wages in lieu thereof, failure to provide meal

periods or premium wages in lieu thereof, failure to provide accurate itemized wage statements, and failure to reimburse Employee and other aggrieved employees for work-related expenses.

Employer failed to pay Employee and other aggrieved employees for all hours worked at the legally mandated wage rates. Employer failed to pay Employee and other aggrieved employees all legally mandated wages, including regular, overtime, and double-time wages, for all work performed, in violation of California law. Specifically, Employer obligated Employee and other aggrieved employees to work off-the-clock performing such services assisting painters, painting, sanding, moving supplies and parts, amongst other responsibilities prior to clocking in and after clocking out. If Employee's or other aggrieved employees shift ended while completing all their scheduled project(s) for that day, Employer required Employee and other aggrieved employees to clock-out and continue to work in order to complete the assigned project(s). As such, Employee and other aggrieved employees were not compensated for the time worked during these periods. Employer's conduct is in violation of Labor Code sections 294, 510, and 1194, and is actionable under PAGA.

Employer also failed to provide Employee and other aggrieved employees with timely uninterrupted meal and rest periods. Employer had a practice of incentivizing Employee and other aggrieved employees to prioritize completing projects in lieu of timely uninterrupted duty-free meal and rest breaks. In addition, Employer failed to provide Employee and other aggrieved employees a second 30-minute meal period for shifts over ten (10) hours. If Employee received a meal and or rest break, his breaks were regularly interrupted by Employer ordering him to return to work prior to the end of the break and or asking for an update regarding the status of a project. As a result of Employer's policy and practices, Employee and other aggrieved employees did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Employer's conduct is in violation of Labor Code sections 226.7 and 512, and is also actionable under PAGA.

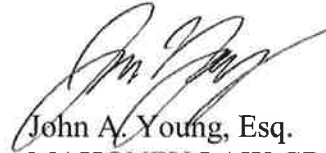
As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing the actual hours worked correct premium wages earned per pay period as well as the total hours worked for the pay period. In addition, Employer failed to include Employee's and other aggrieved employees' hourly rate on their pay statements. Employer's conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer 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.

Further, Employer failed to reimburse Employee and other aggrieved employees for their work-related expenses in violation of Labor Code Section 2802. Specifically, Employee and other aggrieved were required to use their personal phone to communicate with Employer to complete their work-related responsibilities. Employer's failure to reimburse Employee and other aggrieved employees for work-related expenses is a direct violation of Labor Code Section 2802.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Young".

John A. Young, Esq.
MAHONEY LAW GROUP, APC