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Attorneys for Plaintiff Jose Refugio Gonzalez Quiroz,
individually and on behalf of all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

JOSE REFUGIO GONZALEZ QUIROZ,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

COFFMAN SPECIALTIES, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendant(s).

CASE NO.: 37-2020-00022698-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods or Compensation in Lieu Thereof;
3. Failure to Permit Rest Periods or Provide Compensation in Lieu Thereof;
4. Knowing and Intentional Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay Wages at Termination;
6. Failure to Reimburse Business Expenses;
7. Violations of the Unfair Competition Law; and
8. Enforcement of the Private Attorneys General Act of 2004.

1 Plaintiff JOSE REFUGIO GONZALEZ QUIROZ (“Plaintiff”), on behalf of himself and all
2 others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint against Defendants COFFMAN SPECIALTIES, INC., a California corporation; and
4 DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”) and alleges as
5 follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this proposed class action pursuant to California Code of Civil
8 Procedure section 382, on behalf of himself and all current and former non-exempt employees of
9 Defendants in California during the Class Period (collectively the “Class” or “Class Members”).
10 The term Class Period is defined as four years prior to the filing of this action to the date of class
11 certification.

12 2. Plaintiff also brings this representative action pursuant to Labor Code sections 2698
13 *et seq.* (“PAGA”), against Defendants, on behalf of himself individually and other aggrieved
14 employees who are and were employed by Defendants as non-exempt employees throughout
15 California during the PAGA Period. The term PAGA Period is defined as one year prior to
16 Plaintiff’s notice of Labor Code violations to the Labor and Workforce Development Agency
17 (“LWDA”) and Defendants until judgment.

18 3. This proposed class action and representative action seeks, *inter alia*, unpaid wages
19 (including minimum, regular and overtime wages), and interest thereon; compensation for non-
20 compliant meal periods and rest breaks; waiting time penalties; itemized wage statement penalties;
21 business expense reimbursements; civil penalties pursuant to PAGA; interest; and reasonable
22 attorneys’ fees and costs. Plaintiff’s action is brought under, *inter alia*, the Industrial Welfare
23 Commission (“IWC”) Wage Orders and applicable provisions of the California Code of
24 Regulations, Business & Professions Code sections 17200 *et seq.*, Civil Code section 3289, Code
25 of Civil Procedure section 1021.5, and Labor Code sections 201-204, 218.6, 226, 226.7, 510, 512,
26 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, 2800 and 2802.

27 4. Under the California Unfair Competition Law, Business and Professions Code
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1 (“Cal. Bus. & Prof. Code”) sections 17200 *et seq.* (“UCL”), and pursuant to the class action
2 procedures provided for in this statute, Plaintiff, on behalf of himself and the proposed Class, seeks
3 restitution of all benefits Defendants have received from their employees due to their unlawful
4 business practices, including but not limited to, failure to provide minimum wage, regular and
5 overtime compensation due for all hours worked, failure to provide compliant meal periods and
6 rest breaks to their employees or compensation in lieu thereof, failure to maintain proper records
7 of hours worked, failure to reimburse business expenses, and failure to provide accurate itemized
8 wage statements.

9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
11 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
12 in all cases except those given to other trial courts. All claims alleged herein arise under California
13 law for which Plaintiff seeks relief authorized by California law. Further, this is a class action
14 pursuant to California Code of Civil Procedure section 382 and representative action pursuant to
15 the PAGA. As such, the monetary damages, restitution, penalties, and other amounts sought by
16 Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established
17 according to proof at trial. The Court also has jurisdiction over certain causes of action pursuant to
18 California Business & Professions Code sections 17203 and 17204, which provide for exclusive
19 jurisdiction for enforcement of this statute in any court of competent jurisdiction.

20 6. This Court has jurisdiction over Defendants because each Defendant is a citizen of
21 California, a corporation or association organized under the laws of the State of California, an
22 association authorized to do business in California and registered with the California Secretary of
23 State, or does sufficient business in California, has sufficient minimum contacts with California or
24 otherwise intentionally avails itself of the laws and markets of California, through the promotion,
25 sale, marketing and distribution of its products and/or services in California, to render the exercise
26 of jurisdiction by the California courts permissible.

27 7. Venue in San Diego County is proper under Cal. Bus. & Prof. Code section 17203
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1 and California Code of Civil Procedure section 395.5 because a substantial part of Defendants'
2 unlawful conduct alleged herein occurred in this County, Defendants had and have ongoing projects
3 in this County, Defendants conduct substantial business in this County, Defendants' liability arose
4 in this County, and/or Defendants reside, transact business, maintain offices, and/or have an agent
5 or agents in this county. The relief requested is within the jurisdiction of this Court.

6 **PARTIES**

7 8. Plaintiff Jose Refugio Gonzalez Quiroz is an individual who resides in California
8 and is currently employed by Defendants in California as a non-exempt employee.

9 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
10 COFFMAN SPECIALTIES, INC. ("Coffman Specialties") was and is a California corporation with
11 its principal executive office located in San Diego County. Coffman Specialties is in the
12 construction business, and specializes in large public and governmental projects. Coffman
13 Specialties regularly conducts business within the State of California and derives substantial
14 revenues from services performed in California. Coffman Specialties is, and at all relevant times
15 was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes,
16 and thereon alleges that the practices and policies of Coffman Specialties that are complained of by
17 way of this Class Action Complaint were implemented during the relevant time period.

18 10. Defendants continue to employ non-exempt employees within California.

19 11. Plaintiff is unaware of the true names and capacities of those Defendants identified
20 as DOES 1 through 50. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is
21 informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent,
22 sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
23 each related entity, and was acting with the knowledge and authorization of each of the other
24 Defendants. Plaintiff will seek to amend this complaint to allege the true names and capacities of
25 each DOE Defendant when their names have been ascertained and identified. Plaintiff is informed,
26 believes and thereon alleges that each of the Defendants sued as DOES 1 through 50 participated
27 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
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1 and omissions and some portion of the damages alleged herein.

2 12. Plaintiff is informed, believes and thereon alleges that at all times material hereto,
3 each Defendant acted in all respects pertinent to this action as the agent of the other Defendant,
4 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
5 each Defendant are legally attributable to the other Defendant. Furthermore, Defendants in all
6 respects acted as the employer and/or joint employer of Plaintiff and the class members.

7 13. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
8 them, at all times material hereto, were the joint employers, parent companies, successor
9 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
10 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants.
11 Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions
12 alleged herein within the course and scope of said relationship(s), and are a proximate cause of
13 Plaintiff's damages as herein alleged.

14 14. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
15 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality
16 and separateness between the individual and the corporation does not exist, as Defendants, and
17 DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
18 herein were mere shells, instrumentalities and conduits through which DOES 1 through 50,
19 inclusive, carried out their business in the business name, exercising complete control and
20 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
21 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES
22 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;
23 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
24 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
25 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
26 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
27 between and among Defendants.

1 15. At all relevant times herein, Defendants were agents of each other and acting within
2 the course and scope of their agency.

3 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

4 16. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this
5 action individually and as a class action on behalf of a proposed Class defined as follows:

6 All current and former non-exempt employees employed by
7 Defendants in the State of California within four years prior to the
8 commencement of this action to the date of class certification.

9 17. The Class is also comprised of the following Subclass:

10 (a) Waiting Time Sub-Class: Those members of the Class who separated from
11 their employment with Defendants within three years prior to the filing of this Complaint to the
12 date of class certification.

13 18. Plaintiff reserves the right pursuant to California Rules of Court Rule 3.764 and
14 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
15 greater specificity and/or further division into subclasses or limitation to particular issues based on
16 further investigation and discovery.

17 19. This action is brought, and may properly be maintained, as a class action pursuant
18 to California Code of Civil Procedure section 382 because there is a well-defined community of
19 interest in the litigation, and the proposed class is easily ascertainable. This action presents
20 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
21 predominance, and superiority requirements of this provision.

22 20. Through this action, Plaintiff alleges Defendants have consistently maintained and
23 enforced against Plaintiff and Class Members unlawful employment practices and policies which
24 violate the Labor Code and IWC Wage Orders.

25 21. Plaintiff is informed, believes, and thereon alleges that during the relevant time
26 period, Defendants failed to pay Plaintiff and Class Members all minimum, regular and overtime
27 wages for all hours worked, in violation of the California Labor Code and IWC Wage Orders.
28 Specifically, during the relevant time period, Defendants failed to compensate Plaintiff and Class

Members for all hours worked by requiring them to arrive to work before their scheduled start time without compensation, adjusting Plaintiff's and Class Members' timesheets to reflect less hours worked, and rounding Plaintiff's and Class Members' time worked to Defendants' advantage.

22. Plaintiff is informed, believes, and thereon alleges that during the relevant time period, Defendants deprived Plaintiff and Class Members of the opportunity to take all of their statutorily entitled meal periods by requiring them to work in excess of five hours in a workday without being afforded a timely, off-duty 30-minute meal period and failing to adopt and implement a compliant meal period policy. Specifically, Plaintiff and Class Members were not allowed to leave the job site in order to take meal periods, and/or frequently missed their meal periods, and had them cut short or interrupted because Defendants required them to continue working or return to work before 30 minutes had passed, in violation of the Labor Code and IWC Wage Orders. Additionally, Defendants failed to authorize a compliant, off-duty second meal period when Plaintiff and Class Members worked in excess of ten hours in a workday, and maintained a practice of prioritizing work demands over allowing Plaintiff and Class Members to take compliant meal periods, in violation of the Labor Code and IWC Wage Orders. Defendants failed to provide one additional hour of pay at their regular rate of pay for each day that Plaintiff and Class Members missed a meal period, in violation of the Labor Code and IWC Wage Orders.

23. Plaintiff is informed, believes, and thereon alleges that during the relevant time period, Defendants failed to permit Plaintiff and Class Members to take all of their statutorily entitled rest periods by requiring them to work over a four-hour period (or major fraction thereof) without taking off-duty, ten-minute rest periods during the appropriate time intervals, failing to adopt and implement a compliant rest break policy, maintaining a practice of prioritizing work demands over allowing employees to take compliant rest breaks, failing to permit Plaintiff and Class Members to take rest breaks, and requiring them to remain on premises during their entire shift, in violation of the Labor Code and IWC Wage Orders. Defendants failed to provide one additional hour of pay at the regular rate of pay for each day that Plaintiff and Class Members missed a rest period, in violation of the Labor Code and IWC Wage Orders.

25. Plaintiff is informed, believes, and thereon alleges that during the relevant time period, Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage statements. Plaintiff and Class Members received wage statements which did not accurately reflect the gross and net wages earned, total hours worked, and all applicable rates of pay and the corresponding number of hours worked at each pay rate, in violation of the Labor Code and IWC Wage Orders.

26. Plaintiff is informed, believes, and thereon alleges that during the relevant time period, Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses incurred in the performance of their duties. Defendants required Plaintiff and Class Members to drive their personal vehicles during their shifts and for work-related travel during business trips without reimbursing them for mileage, insurance, wear and tear on their vehicles, and parking costs, in violation of the Labor Code and IWC Wage Orders. Additionally, Defendants required Plaintiff and Class Members to use their personal cellular phones to communicate with supervisors and coworkers, and receive job site and travel information via text message, without reimbursing them for a reasonable portion of their cellular phone bills, in violation of the Labor Code and IWC Wage Orders.

22 27. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
23 described throughout this Complaint were willful.

25 28. The Class is so numerous that joinder of all of its members is impracticable. While
26 the exact number and identities of Class Members are unknown to Plaintiff at this time and can
27 only be ascertained through appropriate discovery, Plaintiff is informed, believes and thereon

1 alleges that the Class consists of more than 100 persons.

2 29. A class action is the only available method for the fair and efficient adjudication of
3 this controversy. The members of the Class are so numerous that joinder of all members is
4 impractical, if not impossible. The identity of Class Members can be ascertained by analysis of
5 Defendants' employee and payroll records.

6 **COMMONALITY**

7 30. Common questions of fact and law exist as to all members of the Class that
8 predominate over any questions affecting only individual Class Members. These common legal
9 and factual questions include, but are not limited to, the following:

10 (a) Whether Defendants failed to pay Plaintiff and Class Members all minimum,
11 regular and overtime wages for all hours worked by Plaintiff and Class Members;

12 (b) Whether Defendants required Plaintiff and Class Members to perform work
13 off-the-clock without compensation;

14 (c) Whether Defendants rounded Plaintiff and Class Members' time worked to
15 Defendants' advantage;

16 (d) Whether Defendants failed to provide timely, uninterrupted, off-duty meal
17 periods to Plaintiff and Class Members, or required Plaintiff and Class Members to work through
18 their meal periods without compensation in lieu thereof;

19 (e) Whether Defendants failed to permit timely, uninterrupted, off-duty rest
20 breaks for every four hours or major fraction thereof worked by Plaintiff and Class Members, or
21 required Plaintiff and Class Members to work through their rest breaks without compensation in
22 lieu thereof;

23 (f) Whether Defendants failed to timely pay Waiting Time Subclass Members
24 all wages due either immediately upon termination or within 72 hours after resignation;

25 (g) Whether Defendants' conduct was willful;

26 (h) Whether Defendants failed to issue accurate itemized wage statements to
27 Plaintiff and Class Members;

(i) Whether Defendants required Plaintiff and Class Members to use their personal cellular phones to communicate with Defendants' supervisors, employees and customers, and failed to reimburse them for a reasonable portion of their cellular phone bills;

(j) Whether Defendants required Plaintiff and Class Members to drive their personal vehicles during their shifts and for work-related travel during business trips without reimbursing them for mileage, insurance, wear and tear on their vehicles, and parking costs;

(k) Whether Defendants engaged in unfair business practices in violation of Cal. Bus. & Prof. Code sections 17200 *et seq.*; and

(l) Additional common questions of law and fact that may develop as the litigation progresses.

TYPICALITY

31. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the claims of the Class; and the legal issues raised under California state law as a result of Defendants' conduct apply equally to Plaintiff and the Class Members.

ADEQUACY OF REPRESENTATION

32. Plaintiff is an adequate representative of the Class, in that his claims (and defenses, if any) are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow Class Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has the same interests in the litigation of this case as the Class Members; and is committed to vigorous prosecution of this case and has retained competent counsel experienced in class action and wage and hour litigation of this nature.

PREDOMINANCE

33. Defendants have engaged in a common course of wage and hour abuse toward Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff

1 and Class Members predominate over any individual issues. Adjudication of these common issues
2 in a single action has important and desirable advantages of judicial economy.

3 **SUPERIORITY OF CLASS ACTION**

4 34. A class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy because individual litigation of the claims of all Class Members is
6 impracticable. Even if every Class Member could afford individual litigation, the court system
7 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
8 cases would proceed. Individualized litigation would also present the potential for varying,
9 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
10 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
11 individual actions by Class Members may establish inconsistent standards of conduct for
12 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
13 the issues presented herein, presents fewer management difficulties, conserves the resources of the
14 parties and the court system, and protects the rights of each Class Member.

15 35. Defendants have acted or refused to act in respects generally applicable to the Class,
16 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
17 herein.

18 **FIRST CAUSE OF ACTION**

19 **(FAILURE TO PAY WAGES)**

20 **(Against All Defendants)**

21 36. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
22 though fully set forth herein.

23 37. At all times relevant, Defendants had a duty to comply with California Labor Code
24 sections 204, 510, 1194, 1194.2, 1197, and 1198, and the applicable IWC Wage Orders and
25 California Code of Regulations.

26 38. Labor Code section 204 and the IWC Wage Orders require timely payment of all
27 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
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1 designated in advance by the employer as the regular paydays. All wages in earned in excess of the
2 normal work period must be paid no later than the payday for the next regular payroll period.

3 39. At all times relevant, Labor Code section 510, and applicable sections of the
4 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
5 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
6 section 510 and applicable provisions of the California Code of Regulations and Wage Orders state
7 that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must
8 be paid at one and one-half times the employee's regular rate of pay. Any work performed in excess
9 of 12 hours in a workday must be compensated at the rate of no less than twice the regular rate of
10 pay for an employee.

11 40. Labor Code section 1194 provides that any employee receiving less than the legal
12 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
13 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
14 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

15 41. California Labor Code section 1194.2 authorizes the recovery of liquidated damages
16 in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

17 42. Labor Code section 1197 provides that the payment of a lower wage than the
18 minimum wage fixed by the commission or by any applicable state or local law is unlawful.

19 43. Plaintiff is informed, believes, and thereon alleges that during the relevant time
20 period, Defendants failed to pay Plaintiff and Class Members all wages for hours worked (including
21 minimum and overtime wages), due to Defendants' practices of requiring Plaintiff and Class
22 Members to arrive to work before their scheduled start time without compensation, adjusting
23 Plaintiff's and Class Members' timesheets to reflect less hours worked, and rounding Plaintiff's
24 and Class Members' time worked to Defendants' advantage.

25 44. Plaintiff is informed, believes, and thereon alleges that during the relevant time
26 period, Plaintiff and Class Members were frequently required to work over eight hours per workday
27 and/or 40 hours in a workweek. Defendants failed to properly compensate Plaintiff and Class
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Members at one and one-half times their regular rate of pay for all overtime hours worked due to Defendants' practices above.

45. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss of earnings from minimum wage and overtime compensation due, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

46. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

SECOND CAUSE OF ACTION
(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU
THEREOF)
(Against All Defendants)

47. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

48. At all relevant times, Defendants had a duty to comply with California Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

49. Labor Code section 226.7 states, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission," and requires payment of one (1) hour of pay in lieu of meal periods not provided by the employer. (Lab. Code § 226.7(a)-(c).)

50. Labor Code section 512 and Section 11 of the applicable IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work), except that if the total work period per day is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours per day and must begin before the employee's tenth hour of work, except if the total hours worked is no more

1 than 12 hours, the second meal period may be waived by mutual consent of the employer and
2 employee, but only if the first meal period was not waived.

3 51. Section 11 of the applicable IWC Wage Orders state that “[u]nless the employee is
4 relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
5 duty’ meal period and counted as time worked.”

6 52. Throughout the relevant time period, Plaintiff and Class Members regularly worked
7 over five hours in a workday and did not receive a timely, off-duty meal period due to Defendants’
8 failure to adopt and implement a compliant meal period policy. Specifically, Plaintiff and Class
9 Members were not allowed to leave the job site in order to take meal periods, and/or frequently
10 missed their meal periods, and had them cut short or interrupted because Defendants required them
11 to continue working or return to work before 30 minutes had passed. Additionally, Defendants
12 failed to authorize a compliant, off-duty second meal period when Plaintiff and Class Members
13 worked in excess of ten hours in a workday, and maintained a practice of prioritizing work demands
14 over allowing Plaintiff and Class Members to take compliant meal periods.

15 53. Throughout the relevant time period, Defendants failed to permit Plaintiff and Class
16 Members to take timely, uninterrupted, off-duty meal periods as required by law, and failed to pay
17 Plaintiff and Class Members meal period premiums for each workday that a compliant meal period
18 was not provided.

19 54. Plaintiff is informed, believes, and thereon alleges that Class Members did not
20 voluntarily waive their meal periods.

21 55. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
22 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
23 of premium pay for meal period violations and earnings, in an amount to be established at trial, plus
24 prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
25 violations are deemed unpaid wages, Plaintiff will also seek attorneys’ fees and costs pursuant to
26 statute.

27 56. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
28

as described herein and below.

THIRD CAUSE OF ACTION
**(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU
THEREOF)**
(Against All Defendants)

57. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

58. At all relevant times, Defendants had a duty to comply with California Labor Code section 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

59. Labor Code section 226.7 states “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.” (Lab. Code § 226.7(a).)

60. Section 12 of the applicable Wage Order provides in relevant part that:

(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. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, 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.

(B) 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.

61. Plaintiff is informed, believes, and thereon alleges that Defendants required Plaintiff and Class Members to regularly work shifts in excess of three and one-half hours without being permitted the opportunity to take a paid, uninterrupted, off-duty rest period of at least ten (10) minutes for every four hours worked or major fraction thereof. Specifically, Defendants failed to adopt and implement a compliant rest break policy, maintained a practice of prioritizing work

1 demands over allowing employees to take compliant rest breaks, failed to permit Plaintiff and Class
2 Members to take rest breaks, and required them to remain on premises during their entire shift.

3 62. During the relevant time period, Defendants failed to pay Plaintiff and Class
4 Members rest period premiums for each workday that a compliant rest period was not permitted.

5 63. Plaintiff is informed, believes, and thereon alleges that Plaintiff and Class Members
6 did not voluntarily waive rest periods.

7 64. As a direct and proximate result of Defendants' unlawful conduct, as set forth
8 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
9 of earnings, in an amount to be established at trial, plus prejudgment interest pursuant to statute.
10 To the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiff
11 will also seek attorneys' fees and costs pursuant to statute.

12 65. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
13 as described herein and below.

14 **FOURTH CAUSE OF ACTION**

15 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

16 **(Against All Defendants)**

17 66. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
18 though fully set forth herein.

19 67. At all times relevant, Defendants had a duty to comply with California Labor Code
20 section 226 and the applicable IWC Wage Orders and California Code of Regulations.

21 68. Labor Code section 226(a) provides that, at the time of each payment of wages, an
22 employer shall provide each employee with a wage statement itemizing, among other things, the
23 gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect and
24 the corresponding number of hours worked at each rate by the employee during the pay period.

25 69. Labor Code section 226(e) provides that an employee suffering injury as a result of
26 a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is
27 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
28

1 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
2 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs. An employee is
3 deemed to suffer injury if the employer fails to provide a wage statement.

4 70. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
5 showing, among other things, when the employee begins and ends each work period, meal periods
6 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
7 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff
8 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
9 knowingly and intentionally failed to comply with the IWC Wage Orders.

10 71. Throughout the relevant time period, Defendants provided wage statements that did
11 not accurately reflect the total number of hours worked by Plaintiff and Class Members at each
12 corresponding pay rate, and the gross and net wages earned, making it difficult for Plaintiff and
13 Class Members to determine whether they were paid correctly for all hours worked, which
14 deductions were made, and the extent of any underpayment. Plaintiff has had to file this lawsuit in
15 order to determine the extent of the underpayment of wages, thereby causing Plaintiff to incur
16 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs
17 had Defendants provided the accurate wages earned. This has also delayed Plaintiff's ability to
18 demand and recover the underpayment of wages from Defendants. Defendants' violations of Labor
19 Code section 226(a) prevented Plaintiff and Class Members from knowing, understanding and
20 disputing the wages paid to them, and resulted in an unjustified economic enrichment to
21 Defendants.

22 72. Defendants knowingly and intentionally failed to provide accurate, itemized wage
23 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
24 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
25 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

26 73. Plaintiff and Class Members are also entitled to injunctive relief under California
27 Labor Code section 226(h), compelling Defendants to comply with California Labor Code section
28

226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

74. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

FIFTH CAUSE OF ACTION
(WAITING TIME PENALTIES)
(Against All Defendants)

75. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

76. At all times relevant, Defendants had a duty to comply with California Labor Code sections 201, 202, and 203, and the applicable IWC Wage Orders and California Code of Regulations. Defendants failed to comply with these final paycheck requirements with respect to Waiting Time Subclass Members.

77. Labor Code sections 201 and 202 require Defendants to pay their employees all wages due at the time the employee is discharged, or within 72 hours of quitting. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

78. The Waiting Time Subclass is entitled to compensation for unpaid wages earned, including, but not limited to, minimum, regular and overtime wages and compensation for noncompliant meal periods and rest periods, but to date have not received such compensation, therefore entitling them to penalties pursuant to Labor Code section 203.

79. As a consequence of Defendants' willful conduct in failing to pay all earned wages, Waiting Time Subclass Members are entitled to up to 30 days' wages as a penalty for Defendants' failure to timely pay wages upon separation of employment, in addition to prejudgment interest, attorneys' fees, and costs in amounts that will be established at trial.

80. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

SIXTH CAUSE OF ACTION
(FAILURE TO REIMBURSE BUSINESS EXPENSES)
(Against All Defendants)

81. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

82. At all relevant times, Defendants had a duty to comply with California Labor Code sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

83. Labor Code section 2800 requires employers to indemnify employees for losses caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and Class Members failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class Members due to their own negligence.

84. Labor Code § 2802(a) provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Labor Code section 2802(b) authorizes employees to recover in a court action interest which shall accrue from the date on which the employee incurred the necessary expenditure or loss. California Labor Code section 2802(c) authorizes employees to also recover attorneys' fees and costs incurred enforcing their right to reimbursements.

85. During the relevant time period, Defendants required Plaintiff and Class Members to drive their personal vehicles during their shifts and for work-related travel during business trips, without being reimbursed for mileage, insurance, wear and tear on their vehicles, and parking costs. Additionally, Defendants required Plaintiff and Class Members to use their personal cellular phones to communicate with supervisors and coworkers, and receive job site and travel information via text message, without reimbursing them for a reasonable portion of their cellular phone bills.

86. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and

1 2802, and the applicable Wage Order by failing to reimburse Plaintiff and Class Members for all
2 of their out-of-pocket business expenses incurred in the discharge of their job duties.

3 87. As a consequence of Defendants' willful conduct, Plaintiff and Class Members have
4 sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be
5 established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

6 88. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
7 as described herein and below.

8 **SEVENTH CAUSE OF ACTION**
9 **(UNFAIR BUSINESS PRACTICES)**
10 **(Against All Defendants)**

11 89. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
12 though fully set forth herein.

13 90. Cal. Bus. & Prof. Code Section 17200, *et seq.* ("UCL") prohibits unfair
14 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

15 91. Defendants' conduct, as alleged herein, has been and continues to be unfair,
16 unlawful and harmful to Plaintiff, Class Members, and Defendants' competitors. Plaintiff seeks to
17 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
18 section 1021.5.

19 92. Defendants' activities, as alleged herein, violate California law and constitute
20 unlawful business acts or practices in violation of the UCL.

21 93. A violation of the UCL may be predicated on the violation of any state or federal
22 law.

23 94. Plaintiff brings this action on behalf of himself and all members of the general
24 public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below
25 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of
26 the UCL. Defendants engaged in unfair competition as follows:

27 (i) Violations of Labor Code sections 510, 1194, 1197 and 1198 for failure to
28

1 pay minimum and overtime wages;

2 (ii) Violations of Labor Code sections 512 and 226.7 for failure to provide
3 timely, off-duty, uninterrupted meal periods;

4 (iii) Violations of Labor Code section 226.7 for failure to permit off-duty,
5 uninterrupted rest breaks for every four hours worked or major fraction thereof;

6 (iv) Violations of Labor Code section 226 for failure to provide accurate itemized
7 wage statements;

8 (v) Violations of Labor Code sections 201, 202 and 203 for failure to pay
9 accrued wages upon separation of employment;

10 (vi) Violations of Labor Code sections 2800 and 2802 for failure to reimburse
11 business expenses; and

12 (vii) Violations of the IWC Wage Orders for the same conduct above.

13 95. Defendants' course of conduct, acts, and practices in violation of California law
14 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
15 conduct described herein violates the policy or spirit of such laws or otherwise significantly
16 threatens or harms competition. The substantial harm to Plaintiff and Class Members in being
17 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
18 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
19 described herein constitute an unfair business practices or acts within the meaning of the UCL.

20 96. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
21 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to
22 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
23 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices
24 described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and
25 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of
26 justice for Defendants to continue to retain the property of Plaintiff and Class Members.

27 97. Defendants' failure to adopt policies in accordance with and/or adhere to these laws,
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1 all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair
2 competitive advantage for Defendants in the construction industry, thereby constituting an unfair
3 business practice, as set forth in the UCL.

4 98. Pursuant to Cal. Bus. and Prof. Code section 17203, as a direct and proximate result
5 of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of all
6 employees similarly situated, is entitled to equitable and injunctive relief, against such unlawful
7 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
8 avoid a multiplicity of lawsuits. Plaintiff and the Class Members' remedy includes full restitution
9 of all wages and reimbursements which have been unlawfully withheld from Plaintiff and the Class
10 Members as a result of the business acts and practices described herein, and an order enjoining
11 Defendants to cease and desist from engaging in the practices described herein.

12 99. Plaintiff and the Class Members also request any other such legal and equitable
13 relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including
14 an injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
15 practices alleged in this Complaint.

16 100. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class
17 Members are entitled to and seek restitution and disgorgement, and other appropriate relief
18 available under Cal. Bus. & Prof. Code sections 17200 *et seq.* Plaintiff, on behalf of himself and
19 the Class, also seeks recovery of attorneys' fees and costs of this action to be paid by Defendants
20 as provided by Code of Civil Procedure section 1021.5.

21 101. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
22 as described herein and below.

23 **EIGHTH CAUSE OF ACTION**

24 **(ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

25 **(Against All Defendants)**

26 102. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.

1 103. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
2 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged
3 to have been violated, and after receiving notice from the LWDA of its intention not to investigate
4 or after 65 days have passed without notice from the LWDA.

5 104. On June 16, 2020, Plaintiff gave written notice of the specified provisions alleged
6 to have been violated, including the facts and theories to support the alleged violations, as required
7 by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants
8 and to the LWDA by electronically filing the notice via the Department of Industrial Relations'
9 website. More than 65 days has passed since Plaintiff submitted his PAGA notice to the LWDA
10 without notice from the LWDA. Accordingly, Plaintiff has exhausted his administrative remedies
11 and may amend his Complaint to add a PAGA cause of action.

12 105. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
13 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
14 divisions, commissions, boards, agencies or employees for violation of the code may, as an
15 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
16 himself and other current or former employees pursuant to the procedures specified in Labor Code
17 section 2699.3.

18 106. For all provisions of the Labor Code except those for which a civil penalty is
19 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
20 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
21 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
22 pay period in which Defendants violated these provisions of the Labor Code.

23 107. Defendants' conduct violates numerous Labor Code sections, including, but not
24 limited to, the following:

25 (a) Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1194,
26 1194.2, 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
27 regular, overtime, and double time wages) owed to Plaintiff and other aggrieved employees during
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employment and upon separation of employment as herein alleged;

(b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

(c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(d) Violation of Labor Code sections 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

(e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate records regarding the employment of Plaintiff and other aggrieved employees as herein alleged; and

(f) Violation of Labor Code sections 2800 and 2802 for failure to reimburse necessary business expenses.

108. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

109. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for

1 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
2 pay period for which the employee is underpaid regardless of whether the initial violation is
3 intentionally committed.

4 110. As set forth above, Defendants have violated numerous provisions of the Labor
5 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
6 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the
7 underpaid employees, and the State of California.

8 111. Plaintiff is an “aggrieved employee” because he was employed by the alleged
9 violators and had one or more of the alleged violations committed against him, and therefore is
10 properly suited to represent the interests of all other aggrieved employees.

11 112. Plaintiff has exhausted the procedural requirements under Labor Code section
12 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself
13 and all other aggrieved employees under the PAGA.

14 113. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
15 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
16 above.

17 114. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
18 herein.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff, on behalf of himself, the proposed Class, and the aggrieved
21 employees, prays for judgment and the following specific relief against Defendants, jointly and
22 severally, as follows:

- 23 1. That the Court certify the proposed Class and Subclasses, and any other class or
24 subclasses as appropriate under California Code of Civil Procedure section 382;
- 25 2. That Plaintiff be appointed as the Class Representative;
- 26 3. That Daily Aljian LLP and the Law Office of Daniel J. Hyun be appointed as Class
27 Counsel;
- 28

1 18. A declaratory judgment that the practices complained of herein are unlawful under
2 California law;

3 19. Such other equitable relief as the Court may deem proper; and

4 20. An award of such other and further relief as this Court may deem appropriate.

5 Dated: August 25, 2020

DAILY ALJIAN LLP
LAW OFFICE OF DANIEL J. HYUN

By: /s/ Shelly D. Song

Justin E. D. Daily

Shelly D. Song

Daniel J. Hyun

Attorneys for Plaintiff Jose Refugio

Gonzalez Quiroz, individually and on
behalf of all others similarly situated

PROOF OF SERVICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Case Name: JOSE REFUGIO GONZALEZ QUIROZ, individually and on behalf of all others similarly situated v. COFFMAN SPECIALTIES, INC., a California corporation;
Case No.: 37-2020-00022698-CU-OE-CTL

I am employed in the City of Newport Beach, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 100 Bayview Circle, Suite 5500, Newport Beach, California 92660. On **August 25, 2020**, I caused the foregoing document(s) to be served:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT 1. Failure to Pay Wages; 2. Failure to Provide Meal Periods or Compensation in Lieu Thereof; 3. Failure to Permit Rest Periods or Provide Compensation in Lieu Thereof; 4. Knowing and Intentional Failure to Provide Accurate Itemized Wage Statements; 5. Failure to Pay Wages at Termination; 6. Failure to Reimburse Business Expenses; 7. Violations of the Unfair Competition Law; and 8. Enforcement of the Private Attorneys General Act of 2004.

on the following parties:

Attn: Colleen Coffman
Coffman Specialties, Inc.
9685 Via Excelencia Ste 200
San Diego, CA 92126
Agent for Service of Process

Daniel J. Hyun
LAW OFFICE OF DANIEL J. HYUN
1100 W. Town and Country Road, Ste. 1250
Orange, CA 92868
Attorneys for Plaintiff, Jose Refugio Gonzalez Quiroz, individually and on behalf of all others similarly situated

[X] (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Newport Beach, California. I am readily familiar with the practice of DAILY ALJIAN LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

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

Executed on **August 25, 2020**, at Newport Beach, California.

/s/ Daisy Cruz

Daisy Cruz