

FILED
Superior Court of California
County of Los Angeles

SEP 24 2020

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MIGUEL OLIVAS, an individual, for himself and
all members of the putative class,

Plaintiff,

v.

FOUNDATION BUILDING MATERIALS, a
California Corporation, FOUNDATION
BUILDING MATERIALS, INC. a California
Corporation, FOUNDATION BUILDING
MATERIALS, LLC, a California Corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV22778

[Assigned for all purposes to the Honorable
William F. Highberger, Dept. 10]

CLASS ACTION

FIRST AMENDED COMPLAINT

- (1) Violation of California Labor Code § 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code § 226.7 (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800, and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Business & Professions Code §§ 17200, et seq.
- (9) Violation of California Labor Code § 2698 et seq. (California Labor Code Private Attorney General Act of 2004).

DEMAND FOR JURY TRIAL

1 Plaintiff MIGUEL OLIVAS("Plaintiff") on behalf of himself, all other members of the general
2 public similarly situated, and the aggrieved employees in his representative capacity under the Private
3 Attorney General Act ("PAGA"), files this First Amended Complaint against Defendants
4 FOUNDATION BUILDING MATERIALS, a California Corporation, FOUNDATION BUILDING
5 MATERIALS, INC. a California Corporation, FOUNDATION BUILDING MATERIALS, LLC, a
6 California Corporation, and DOES 1 through 100, inclusive ("Defendants"). Plaintiff's allegations are
7 based upon information and belief and upon investigation of Plaintiff's counsel, except for allegations
8 specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

9 **JURISDICTION AND VENUE**

10 1. This class action is brought pursuant to California Code of Civil Procedure section 382.
11 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
12 Superior Court and will be established according to proof at trial. The amount in controversy for each
13 class representative or putative class member, including claims for compensatory damages, interest,
14 penalties, and attorneys' fees, is less than \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those
17 given by statute to other courts." The statutes under which this action is brought do not specify any
18 other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because each defendant is either a citizen
20 of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of
21 the California market so as to render the exercise of jurisdiction over it by the California courts
22 consistent with traditional notions of fair play and substantial justice.

23 4. Venue is proper in this Court because, upon information and belief, the named
24 Defendants reside, transact business, or have offices in this county and the acts and omissions alleged
25 herein took place in this county.

26 **PARTIES**

27 5. Plaintiff MIGUEL OLIVAS("Plaintiff") is a citizen of the State of California.

28 6. Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING

1 MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC (“FBM”) are corporations
2 organized and existing under the laws of the State of California, and transact business throughout the
3 State of California, including the County of Los Angeles. At all relevant times, FBM was the
4 “employer” of Plaintiff within the meaning of all applicable state laws and statutes.

5 7. At all times herein relevant, Defendants FBM and DOES 1 through 100, and each of
6 them, were the agents, partners, joint venturers, representatives, servants, employees, successors-in-
7 interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
8 within the course and scope of their authority as such agents, partners, joint venturers, representatives,
9 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged
10 herein were duly committed with the ratification, knowledge, permission, encouragement, authorization
11 and consent of each defendant designated herein.

12 8. The true names and capacities, whether corporate, associate, individual or otherwise, of
13 defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said defendants by such
14 fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges,
15 that each of the defendants designated as a Doe is legally responsible for the events and happenings
16 referred to in this complaint, and unlawfully caused the injuries and damages to Plaintiff alleged in this
17 complaint. Plaintiff will seek leave of court to amend this complaint to show the true names and
18 capacities when the same have been ascertained

19 9. Defendants FBM and DOES 1 through 100 will hereinafter collectively be referred to as
20 “Defendants” or “FBM.”

21 **FACTUAL ALLEGATIONS**

22 10. Defendants employed Plaintiff as a non-exempt or hourly-paid employee.

23 11. Defendants have the authority to hire and terminate Plaintiff and the other class
24 members; to set work rules and conditions governing Plaintiff and the other class members; and to
25 supervise their daily employment activities.

26 12. Defendants directly hired and paid wages and benefits to Plaintiff and the other class
27 members.

28 13. Plaintiff is informed and believes, and based thereon alleges, that at all times herein

relevant, Defendants were advised by skilled lawyers and other professionals, employees, advisors, and consultants highly knowledgeable about California wage law, employment and personnel practices.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times herein relevant, without any justification, Defendants ignored the employment and personnel policy changes proposed by skilled lawyers and other professionals, employees, advisors, and consultants highly knowledgeable about California wage laws, employment, and personnel practice.

15. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for all work performed, including for overtime compensation.

16. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were working over eight (8) hours per day and were entitled to receive certain wages for overtime compensation and that they were not receiving wages for overtime compensation.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly paid employees.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and/or applicable Labor Codes, thus are entitled to any and all applicable penalties.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when a meal period was missed.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest period was missed.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or

1 should have known that Plaintiff and the other class members were entitled to receive all wages owed
2 to them upon discharge or resignation.

3 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
4 should have known that Plaintiff and the other class members were entitled to receive complete and
5 accurate wage statements in accordance with California law.

6 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
7 should have known that they had a duty to compensate Plaintiff and the other class members pursuant
8 to California law, and that Defendants had the financial ability to pay such compensation, but willfully,
9 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other class
10 members that they were properly denied wages, all in order to increase Defendants' profits.

11 24. At all material times set forth herein, Defendants regularly and consistently failed to
12 compensate Plaintiff and the other class members for all hours worked.

13 25. At all material times set forth herein, Defendants failed to fully comply with the relevant
14 provision of the Labor Code and the IWC orders to pay overtime wages to Plaintiff and the other class
15 members.

16 26. At all material times set forth herein, Defendants failed to fully comply with the relevant
17 provision of the Labor Code and the IWC orders to provide uninterrupted meal and rest periods to
18 Plaintiff and the other class members.

19 27. At all material times set forth herein, Defendants regularly and consistently failed to
20 provide complete and accurate wage statements to Plaintiff and the other class members.

21 28. At all material times set forth herein, Defendants regularly and consistently failed to pay
22 Plaintiff and the other class members all wages owed to them upon discharge or resignation.

23 **CLASS ACTION ALLEGATIONS**

24 29. Plaintiff brings this action on his own behalf and on behalf of all other members of the
25 general public similarly situated, and thus, seeks class certification under Code of Civil Procedure
26 section 382.

27 30. The proposed class is defined as follows:

28 All current and former hourly-paid or non-exempt employees employed

by Defendants within the State of California at any time during the period from June 15, 2016 to final judgment.

31. Plaintiff reserves the right to establish subclasses as appropriate.

32. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be ninety-nine (99) individuals or more and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

c. Plaintiff will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed Class Counsel, are versed in the rules governing class action discovery, certification, settlement, and trial. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Certification of this lawsuit as a class action will advance public policy

objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

33. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- b. Whether Plaintiff and the other class members did not receive wages for all time worked;
- c. Whether Defendants deprived Plaintiff and the other class members of meal periods or required Plaintiff and the other class members to work during meal periods without compensation;
- d. Whether Defendants deprived Plaintiff and the other class members of rest periods or required Plaintiff and the other class members to work during rest periods without compensation;
- e. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- f. Whether Defendants complied with wage reporting as required by the California Labor Code; including, but not limited to, section 226;
- g. Whether Defendants' conduct was willful or reckless;
- h. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200 et seq.;
- i. The appropriate amount of damages, restitution, and/or monetary penalties

1 resulting from Defendants' violation of California law; and

2 j. Whether Plaintiff and the other class members are entitled to
3 compensatory damages pursuant to the California Labor Code.

4 **PAGA ALLEGATIONS**

5 34. At all times herein set forth, PAGA was applicable to Plaintiff's employment by
6 Defendants.

7 35. At all times herein set forth, PAGA provides that any provision of law under the
8 California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for
9 violations of the California Labor Code may, as an alternative, be recovered through a civil action
10 brought by an aggrieved employee on behalf of himself and other current or former employees pursuant
11 to procedures outlined in California Labor Code section 2699.3.

12 36. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
13 employee," who is any person that was employed by the alleged violator and against whom one or
14 more of the alleged violations was committed.

15 37. Plaintiff was employed by Defendants and the alleged violations were committed
16 against him during his time of employment and he is therefore, an aggrieved employee. Plaintiff is an
17 "aggrieved employee" as defined by California Labor Code section 2699, subdivision (c).

18 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
19 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
20 have been met:

21 a. The aggrieved employee shall give written notice by certified mail (hereinafter
22 "Employee's Notice") to the LWDA and the employer of the specific provisions
23 of the California Labor Code alleged to have been violated, including the facts
24 and theories to support the alleged violations.

25 b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
26 and the aggrieved employee by certified mail that it does not intend to
27 investigate the alleged violation within sixty (60) calendar days of the postmark
28 date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the

LWDA Notice is not provided within thirty-three (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

39. On June 12, 2020, Plaintiff provided written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

40. Plaintiff satisfied the administrative prerequisites under California Labor Code section 2699.3, subdivision (a), to recover civil penalties against Defendants in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 221, 222, 226, 226.7, 510, 512(a), 558, 1174(d), 1194, 1198, 2800, 2802, and all applicable wage orders.

FIRST CAUSE OF ACTION

(Violation of California Labor Code section 1198)

(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)

41. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 40 and each and every part thereof with the same force and effect as though fully set forth herein.

42. Pursuant to California Labor Code section 1198 and the applicable IWC Wage Order, it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

43. Pursuant to California Labor Code section 1198, the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

44. Pursuant to the applicable IWC Wage Order, Plaintiff and the other class members are not to be employed more than eight (8) hours in any one workday or more than six (6) days in any

workweek unless they receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

45. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day and more than six (6) days in a workweek, but did not receive overtime pay.

46. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

47. Defendants' failure to pay Plaintiff and the other class members overtime compensation, as required by California laws, violates the provisions of California Labor Code section 1198, and is therefore unlawful.

48. Pursuant to California Labor Code section 1194, subdivision (a), notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

49. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code section 226.7)

(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)

50. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 49, and each and every part thereof with the same force and effect as though fully set forth herein.

51. At all relevant times, the IWC Order and California Labor Code section 226.7, subdivision (a) was applicable to Plaintiff's and the other class members' employment by Defendants.

52. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of

1 the California IWC.

2 53. At all relevant times, the applicable IWC Wage Order provides that an employer may
3 not require, cause or permit an employee to work for a work period of more than five (5) hours per day
4 without providing the employee with a meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is no more than six (6) hours, the meal period may be
6 waived by mutual consent of both the employer and employee.

7 54. During the relevant time period, Plaintiff and the other class members who were
8 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
9 legally-mandated meal periods by mutual consent, were required to work for periods longer than five
10 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

11 55. During the relevant time period, Plaintiff and the other class members who were
12 scheduled to work for a period of time in excess of six (6) hours were required to work for periods
13 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

14 56. During the relevant time period, Defendants intentionally and willfully required Plaintiff
15 and the other class members to work during meal periods and failed to compensate Plaintiff and the
16 other class members the full meal period premium for work performed during meal periods.

17 57. During the relevant time period, Defendants failed to pay Plaintiff and the other class
18 members the full meal period premium due pursuant to California Labor Code section 226.7.

19 58. Defendants' conduct violates applicable IWC Wage Order and California Labor Code
20 section 226.7.

21 59. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7
22 subdivision (b), Plaintiff and the other class members are entitled to recover from Defendants one
23 additional hour of pay at the employee's regular rate of compensation for each work day that the meal
24 period was not provided.

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1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code section 226.7)**

3 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
4 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

5 60. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 59,
6 and each and every part thereof with the same force and effect as though fully set forth herein.

7 61. At all times herein set forth, the applicable IWC Wage Order and California Labor Code
8 section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

9 62. At all relevant times, California Labor Code section 226.7 provides that no employer
10 shall require an employee to work during any rest period mandated by an applicable order of the
11 California IWC.

12 63. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
13 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
14 middle of each work period" and that the "rest period time shall be based on the total hours worked
15 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the
16 total daily work time is less than three and one-half (3 1/2) hours.

17 64. During the relevant time period, Defendants required Plaintiff and other class members
18 to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
19 four (4) hour period worked.

20 65. During the relevant time period, Defendants willfully required Plaintiff and the other
21 class members to work during rest periods and failed to pay Plaintiff and the other class members the
22 full rest period premium for work performed during rest periods.

23 66. During the relevant time period, Defendants failed to pay Plaintiff and the other class
24 members the full rest period premium due pursuant to California Labor Code section 226.7.

25 67. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
26 section 226.7.

27 68. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7,
28 subdivision (b), Plaintiff and the other class members are entitled to recover from Defendants one

1 additional hour of pay at the employees' regular hourly rate of compensation for each work day that the
2 rest period was not provided.

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of California Labor Code sections 1194, 1197, and 1197.1)**

5 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
6 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

7 69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 68,
8 and each and every part thereof with the same force and effect as though fully set forth herein.

9 70. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide
10 that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum
11 so fixed is unlawful.

12 71. During the relevant time period, Defendants regularly failed to pay minimum wage to
13 Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194,
14 1197, and 1197.1.

15 72. Defendants' failure to pay Plaintiff and the other class members the minimum wage as
16 required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections
17 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage
18 compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal
19 to the wages unlawfully unpaid and interest thereon.

20 73. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members
21 are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum
22 wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

23 74. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members
24 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
25 interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code sections 201 and 202)**

3 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
4 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

5 75. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 74,
6 and each and every part thereof with the same force and effect as though fully set forth herein.

7 76. Pursuant to California Labor Code sections 201 and 202, if an employer discharges an
8 employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and
9 if an employee quits his or her employment, his or her wages shall become due and payable not later
10 than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of
11 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
12 quitting.

13 77. During the relevant time period, Defendants intentionally and willfully failed to pay
14 Plaintiff and the other class members their wages, earned and unpaid, within seventy-two (72) hours of
15 Plaintiff and the other class members leaving Defendants' employ.

16 78. Defendants' failure to pay Plaintiff and the other class members their wages, earned and
17 unpaid, within seventy-two (72) hours of them leaving Defendants' employ, is in violation of California
18 Labor Code sections 201 and 202.

19 79. Pursuant to California Labor Code section 203, if an employer willfully fails to pay,
20 without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee
21 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
22 date thereof at the same rate until paid or until an action is commenced; but the wages shall not
23 continue for more than thirty (30) days.

24 80. Plaintiff and the other class members are entitled to recover the statutory penalty for
25 each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum
26 pursuant to California Labor Code section 203.

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1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code section 226, subdivision (a))**

3 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
4 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

5 81. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 80,
6 and each and every part thereof with the same force and effect as though fully set forth herein.

7 82. Pursuant to California Labor Code section 226, subdivision (a), every employer shall
8 furnish each of his or her employees an accurate itemized statement in writing showing: (1) gross
9 wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and
10 any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that
11 all deductions made on written orders of the employee may be aggregated and shown as one item; (5)
12 net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of
13 the employee and his or her social security number; (8) the name and address of the legal entity that is
14 the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee. The deductions made from payments of
16 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
17 year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for
18 at least three years at the place of employment or at a central location within the State of California.

19 83. Defendants intentionally and willfully failed to provide Plaintiff and the other class
20 members with complete and accurate wage statements. The deficiencies included one or more of the
21 following: the failure to include the correct total number of hours worked by Plaintiff and the other
22 class members and the failure to include the correct hourly rate.

23 84. As a result of Defendants' violation of California Labor Code section 226, subdivision
24 (a), Plaintiff and the other class members experienced actual injury because it: (1) resulted in the non-
25 payment of wages; (2) deprived Plaintiff and the other class members of the information necessary to
26 identify discrepancies in Defendant's reported data; (3) created confusion over whether they received
27 all wages owed to them; (4) created difficulty and expense involved in reconstructing pay records; and
28 (5) forced Plaintiff and the other class member to make mathematical computations to analyze whether

1 the wages paid in fact properly compensated them.

2 **SEVENTH CAUSE OF ACTION**

3 **(Violation of California Labor Code §§ 2800 and 2802)**

4 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
5 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

6 85. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 84,
7 and each and every part thereof with the same force and effect as though fully set forth herein.

8 86. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse
9 its employee for all necessary expenditures incurred by the employee in direct consequence of the
10 discharge of his or her job duties or in direct consequence of his or her job duties or in direct
11 consequence of his or her obedience to the directions of the employer.

12 87. Plaintiffs and the other class members incurred necessary business-related expenses and
13 costs that were not fully reimbursed by Defendants, including but not limited to, costs for gas mileage.

14 88. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other
15 class members for necessary business-related expenses and costs.

16 89. Plaintiffs and the other class members are entitled to recover from Defendants their
17 business-related expenses and costs incurred during the course and scope of their employment, plus
18 interest accrued from the date on which the employee incurred the necessary expenditures at the same
19 rate as judgments in civil actions in the State of California.

20 **EIGHTH CAUSE OF ACTION**

21 **(Violation of California Business & Professions Code sections 17200 et seq.)**

22 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
23 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

24 90. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 89,
25 and each and every part thereof with the same force and effect as though fully set forth herein.

26 91. Defendants' conduct, as alleged in this Complaint, has been, and continues to be, unfair,
27 unlawful and harmful to Plaintiff and the other class members, and Defendants' competitors.
28 Accordingly, Plaintiff and the other class members seek to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure section 1021.5.

2 92. Defendants' activities as alleged herein are violations of California law, and constitute
3 unlawful business acts and practices in violation of California Business & Professions Code sections
4 17200, et seq.

5 93. A violation of California Business & Professions Code sections 17200, et seq. may be
6 predicated on the violation of any state or federal law.

7 **Failure to Pay Overtime**

8 94. Defendants' failure to pay overtime in violation of the Wage Orders and California
9 Labor Code section 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by
10 California Business & Professions Code section 17200, et seq.

11 **Failing to Provide Meal Periods**

12 95. Defendants' failure to provide legally required meal periods in violation of the Wage
13 Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair
14 activity prohibited by California Business & Professions Code sections 17200, et seq.

15 **Failure to Provide Rest Periods**

16 96. Defendants' failure to provide legally required rest periods in violation of the Wage
17 Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair
18 activity prohibited by California Business & Professions Code section 17200, et seq.

19 **Failure to Pay Minimum Wages**

20 97. Defendants' failure to pay minimum wages in violation of the Wage Orders and
21 California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or
22 unfair activity prohibited by California Business & Professions Code sections 17200, et seq.

23 **Failure to Timely Pay Wages Upon Termination**

24 98. Defendants' failure to timely pay wages upon termination in violation of California
25 Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity
26 prohibited by California Business & Professions Code sections 17200, et seq.

27 **Failure to Timely Pay Wages During Employment**

28 99. At all times herein set forth, California Labor Code section 204 provides that all wages

1 earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar
2 month, other than those wages due upon termination of an employee, are due and payable between the
3 16th and the 26th day of the month during which the labor was performed.

4 100. At all times herein set forth, California Labor Code section 204 provides that all wages
5 earned by any person in any employment between the 16th and the last day, inclusive, of any calendar
6 month, other than those wages due upon termination of an employee, are due and payable between the 1st
7 and the 10th day of the following month.

8 101. At all times herein set forth, California Labor Code section 204 provides that all wages
9 earned for labor in excess of the normal work period shall be paid no later than the payday for the next
10 regular payroll period.

11 102. During the relevant time period, Defendants intentionally and willfully failed to pay
12 Plaintiff and the other class members all wages due to them, within any time period permissible under
13 California Labor Code section 204.

14 103. Plaintiff and the other class members are entitled to recover all remedies available for
15 violations of California Labor Code section 204.

16 104. Defendants' failure to timely pay wages during employment in violation of California
17 Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by
18 California Business & Professions Code sections 17200, et seq.

19 **Failure to Provide Compliant Wage Statements**

20 105. Defendants' failure to provide compliant wage statements in violation of California
21 Labor Code section 226, subdivision (a), as alleged above, constitutes unlawful and/or unfair activity
22 prohibited by California Business & Professions Code sections 17200, et seq.

23 **Failure to Keep Complete and Accurate Payroll Records**

24 106. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall
25 keep, at a central location in the state or at the plants or establishments at which employees are
26 employed, payroll records showing the hours worked daily by and the wages paid to, and the number of
27 piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective
28 plants or establishments. These records shall be kept in accordance with rules established for this

1 purpose by the commission, but in any case shall be kept on file for not less than two years.

2 107. Defendants have intentionally and willfully failed to keep accurate and complete payroll
3 records showing the hours worked daily and the wages paid to Plaintiff and the other class members.

4 108. As a result of Defendants' violation of California Labor Code section 1174, subdivision
5 (d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected
6 rights.

7 109. More specifically, Plaintiff and the other class members have been injured by
8 Defendants' intentional and willful violation of California Labor Code section 1174, subdivision (d)
9 because they were denied both their legal right and protected interest, in having available, accurate and
10 complete payroll records pursuant to California Labor Code section 1174, subdivision (d).

11 110. Defendants' failure to keep complete and accurate payroll records in violation of
12 California Labor Code section 1174, subdivision (d), as alleged above, constitutes unlawful and/or
13 unfair activity prohibited by California Business & Professions Code sections 17200, et seq.

14 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

15 111. Defendants' failure to reimburse Plaintiffs and the other aggrieved employees for all
16 necessary business-related expenses and costs constitutes unlawful and/or unfair activity prohibited by
17 California Business & Professions Code sections 17200, et seq.

18 **NINTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 2698, et seq.)**

20 **(Against Defendants FOUNDATION BUILDING MATERIALS, FOUNDATION BUILDING**
21 **MATERIALS, INC., FOUNDATION BUILDING MATERIALS, LLC and DOES 1 through 100)**

22 112. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
23 111, and each and every part thereof with the same force and effect as though fully set forth herein.

24 113. PAGA expressly establishes that any provision of the California Labor Code which
25 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
26 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
27 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
28 herself, and other current or former employees.

114. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

115. Plaintiff and the other non-exempt or hourly employees are “aggrieved employees” as defined by California Labor Code section 2699, subdivision (c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

116. California Labor Code sections 510 and 1198 and the applicable wage order require employers to pay their employees overtime compensation equal to one and one-half times their regular rate of pay for all hours worked in excess of eight hours in one day and/or over 40 hours in a week.

117. Defendants do not pay Plaintiff and the other aggrieved employees overtime compensation when they worked in excess of eight hours in one day and/or over 40 hours in a week as alleged above.

Failing to Provide Meal Periods

118. California Labor Code sections 226.7 and 512 and the applicable wage order require employers to pay their employees one additional hour of pay at the employee's regular rate of pay for each workday that a meal period is not provided when it should have been.

119. Defendants do not provide Plaintiff and the other aggrieved employees with meal periods when it should have, nor does it pay them premium pay as alleged above.

Failure to Provide Rest Periods

120. California Labor Code sections 226.7 and 512 and the applicable wage order require employers to pay their employees one additional hour of pay at the employee's regular rate of pay for each workday that a rest break is not provided when it should have been.

121. Defendants do not provide Plaintiff and the other aggrieved employees with rest breaks when it should have, nor does it pay them premium pay as alleged above.

Failure to Pay Minimum Wages

122. California Labor Code sections 1194, 1197, and 1197.1 and the applicable wage order require employers to pay their employees at least the minimum wage for each hour worked.

1 123. Defendants do not pay Plaintiff and the other aggrieved employees the minimum wage
2 for each hour they worked as alleged above.

3 **Failure to Timely Pay Wages Upon Termination**

4 124. California Labor Code sections 201, 202, and 203 and the applicable wage order provide
5 that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
6 due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or
7 her wages shall become due and payable not later than seventy-two hours thereafter, unless the
8 employee has given seventy-two hours previous notice of his or her intention to quit, in which case the
9 employee is entitled to his or her wages at the time of quitting.

10 125. As explained above, Defendants failed to pay Plaintiff and the other aggrieved minimum
11 wage for each hour of work they performed, failed to pay them overtime when they worked in excess of
12 eight hours in one day and/or over 40 hours in a week, and failed to pay them one additional hour of
13 pay at their regular rate of pay when they were not provided meal periods and rest breaks.
14 Accordingly, these wages are not timely paid to Plaintiff and the other aggrieved employees upon their
15 discharge or termination.

16 **Failure to Timely Pay Wages During Employment**

17 126. California Labor Code section 204 and the applicable wage order require that all wages
18 earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar
19 month, other than those wages due upon termination of an employee, are due and payable between the
20 16th and the 26th day of the month during which the labor was performed, and that all wages earned by
21 any person in any employment between the 16th and the last day, inclusive, of any calendar month,
22 other than those wages due upon termination of an employee, are due and payable between the 1st and
23 the 10th day of the following month. Labor Code section 204 also requires that all wages earned for
24 labor in excess of the normal work period shall be paid no later than the payday for the next regular
25 payroll period.

26 127. As explained above, Defendants failed to pay Plaintiff and the other aggrieved
27 employees minimum wage for each hour of work they performed, failed to pay them overtime when
28 they worked in excess of eight hours in one day and/or over 40 hours in a week, and failed to pay them

1 one additional hour of pay at their regular rate of pay when they were not provided meal periods and
2 rest breaks. Accordingly, these wages are not timely paid Plaintiff and the other aggrieved employees
3 during their employment.

4 **Failure to Provide Compliant Wage Statements**

5 128. California Labor Code section 226 and the applicable wage order require employers to
6 make, keep, and provide true, accurate, timely, and complete wage statement.

7 129. Defendants do not provide Plaintiff and the other aggrieved employees with true,
8 accurate, timely, and complete wage statements as alleged above.

9 **Failure to Keep Complete and Accurate Payroll Records**

10 130. California Labor Code section 1174, subdivision (d) requires employers to keep
11 complete and accurate payroll records.

12 131. Defendants do not keep complete and accurate payroll records for Plaintiff and the other
13 aggrieved employees as alleged above.

14 **Failure to Reimburse Business Expenses**

15 132. California Labor Code sections 2800 and 2802 require an employer to reimburse its
16 employee for all necessary expenditures incurred by the employee in direct consequence of the
17 discharge of his or her job duties or in direct consequence of his or her obedience to the directions of
18 the employer.

19 133. As alleged above, Plaintiff and the other aggrieved employees incurred necessary
20 business-related expenses, which were not fully reimbursed by Defendants.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
23 similarly situated, jointly and severally, prays for relief as follows:

24 **Class Certification**

- 25 1. That this action be certified as a class action;
26 2. That Plaintiff be appointed as the representative of the Class;
27 3. That counsel for Plaintiff be appointed as Class Counsel; and
28 4. That Defendants provide to Class Counsel, immediately upon its appointment, the

names and most current contact information (address and telephone numbers) of all class members.

As to the First Cause of Action

5. That the court declare, adjudge, and decree that Defendants violated California Labor Code section 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein; and

9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the court declare, adjudge, and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7, subdivision (b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the court declare, adjudge, and decree that Defendant violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the court make an award to Plaintiff and the other class members of one (1) hour of

1 pay at each employee's regular rate of compensation for each workday that a rest period was not
2 provided;

- 3 19. For all actual, consequential, and incidental losses and damages, according to proof;
- 4 20. For premium wages pursuant to California Labor Code section 226.7, subdivision (b);
- 5 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- 6 22. For reasonable attorneys' fees and costs of suit incurred herein; and
- 7 23. For such other and further relief as the court may deem just and proper.

8 **As to the Fourth Cause of Action**

9 24. That the court declare, adjudge, and decree that Defendants violated California Labor
10 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the
11 other class members;

- 12 25. For general unpaid wages and such general and special damages as may be appropriate;
- 13 26. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
14 Plaintiff and the other class members in the amount as may be established according to proof at trial;
- 15 27. For pre-judgment interest on any unpaid compensation from the date such amounts were
16 due;
- 17 28. For reasonable attorneys' fees and costs of suit incurred herein; and
- 18 29. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 19 30. For such other and further relief as the court may deem just and proper.

20 **As to the Fifth Cause of Action**

21 31. That the court declare, adjudge, and decree that Defendants violated California Labor
22 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
23 termination of the employment of the other class members no longer employed by Defendants;

- 24 32. For all actual, consequential, and incidental losses and damages, according to proof;
- 25 33. For statutory wage penalties pursuant to California Labor Code section 203 for the other
26 class members who have left Defendants' employ;
- 27 34. For pre-judgment interest on any unpaid compensation from the date such amounts were
28 due;

- 1 35. For reasonable attorneys' fees and costs of suit incurred herein; and
2 36. For such other and further relief as the court may deem just and proper.

3 **As to the Sixth Cause of Action**

4 37. That the court declare, adjudge, and decree that Defendants violated the record keeping
5 provisions of California Labor Code section 226, subdivision (a) and applicable IWC Wage Orders as
6 to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage
7 statements thereto;

8 38. For actual, consequential and incidental losses and damages, according to proof;

9 39. For statutory penalties pursuant to California Labor Code section 226, subdivision (e);

10 40. For reasonable attorneys' fees and costs of suit incurred herein; and

11 41. For such other and further relief as the court may deem just and proper.

12 **As for the Seventh Cause of Action**

13 42. For reimbursement of all actual, consequential and incidental losses and damages,
14 according to proof, plus interest, penalties, costs, and reasonable attorneys' fees pursuant to California
15 Labor Code section 2802, subdivision (c); and

16 43. For such other and further relief as the court may deem just and proper

17 44. For such other and further relief as the court may deem just and proper.

18 **As to the Eighth Cause of Action**

19 45. That the court decree, adjudge and decree that Defendants violated California Business
20 and Professions Code sections 17200, et seq.

21 46. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-
22 judgment interest from the day such amounts were due and payable;

23 47. For the appointment of a receiver to receive, manage and distribute any and all funds
24 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
25 of violation of California Business and Professions Code sections 17200, et seq.;

26 48. For injunctive relief to ensure compliance with this section, pursuant to California
27 Business and Professions Code sections 17200, et seq.; and

28 49. For reasonable attorneys' fees and costs of suit incurred herein; and

1 50. For such other and further relief as the court may deem just and proper.

2 **As to the Eighth Cause of Action**

3 51. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of
4 all aggrieved employees, requests and is entitled to recover from Defendants and each of them, unpaid
5 wages and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to
6 California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of
7 them, including but not limited to:

- 8 a. Penalties under California Labor Code section 2699 in the amount of a hundred
9 dollars (\$100) for each aggrieved employee per pay period for the initial
10 violation, and two hundred dollars (\$200) for each aggrieved employee per pay
11 period for each subsequent violation;
- 12 b. Penalties under California Code of Regulations Title 8 section 11070 in the
13 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
14 initial violation, and one hundred dollars (\$100) for each aggrieved employee per
15 pay period for each subsequent violation;
- 16 c. Penalties under California Labor Code section 210 in addition to, and entirely
17 independent and apart from, any other penalty provided in the California Labor
18 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
19 pay period for the initial violation, and two hundred dollars (\$200) for each
20 aggrieved employee per pay period for each subsequent violation; and
- 21 d. Any and all additional penalties and sums as provided by the California Labor
22 Code and/or other statutes.

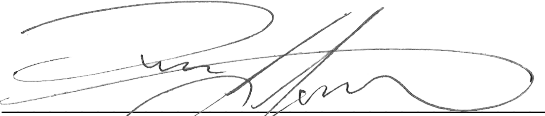
23 52. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
24 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the
25 Labor and Workforce Development Agency for the enforcement of labor laws and education of
26 employers and employees about their rights and responsibilities and twenty-five percent (25%) to the
27 aggrieved employees.

28 53. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs

1 pursuant to California Labor Code sections 2699, 218.5, and 210 and any other applicable statute.

2
3 Date: September 24, 2020

PARRIS LAW FIRM

4
5 By: 

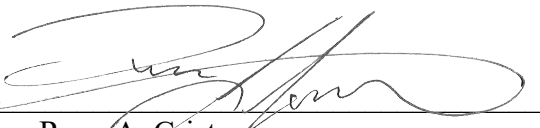
6 Ryan A. Crist
7 Attorneys for Plaintiff,
8 and the Putative Class
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, individually and on behalf of other members of the general public similarly situated,
3 hereby demands a trial by a jury.
4

5 Date: September 24, 2020

PARRIS LAW FIRM

6
7 By: 

8 Ryan A. Crist
9 Attorneys for Plaintiff,
10 and the Putative Class
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PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On September 24, 2020, I served the foregoing document described as **FIRST AMENDED COMPLAINT**, by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

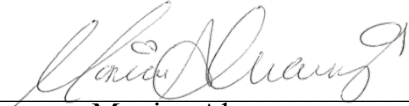
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2784 Gateway Road, Suite 104
Carlsbad, California 92009
Telephone: (760) 438-5199

*Counsel for Defendants Foundation Building
Materials, LLC dba , Foundation Building
Materials; and Foundation Building Materials, Inc.*

[X] Said document was electronically transmitted in the ordinary course of business prior to 6:00 p.m. Pacific Time upon all parties appearing on the Case Anywhere system (www.caseanywhere.com) service list, pursuant to the instructions set forth in the Court's Order in the Superior Court of California, County of Los Angeles, in the case of JCCP 4733.

Executed on September 24, 2020, at Lancaster, California.

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



Monica Alvarez