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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/30/2020 at 08:00:00 AM

Clerk of the Superior Court
By Marc David, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO-CENTRAL DIVISION

10 ALVAN RAMIREZ, individually and on)
11 behalf of himself and others similarly)
12 situated,)

13 Plaintiffs,

14 vs.

15 KOLOA PACIFIC CONSTRUCTION)
16 INC., a California corporation; KERRY)
17 D. VINCI; ERNEST H. GRABBE, JR.;)
18 and DOES 1 through 50 inclusive)

19 Defendants.

Case No.: 37-2020-00026391-CL-OE-CTL

Judge: Hon. Ronald L. Styn
Dept.: C-74

**THIRD AMENDED COMPLAINT
FOR:**

1. Failure to Provide Employee Records;
2. Failure to Pay State Minimum/Prevailing/Vacation Wages;
3. Failure to Pay State Overtime/Prevailing Wages;
4. Failure to Timely Pay Wages Upon Separation of Employment;
5. Meal and Rest Break Labor Code Violations;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Maintain Records; and
8. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)

Complaint Filed: July 28, 2020

1 Plaintiffs ALVAN RAMIREZ (“Plaintiff”) on behalf of himself and acting for
2 the interests of other current and former employees (“Aggrieved Employees”) and all
3 other similarly situated individuals (cumulatively “Plaintiffs”), alleges the following:

4 **NATURE OF THE ACTION**

5 1. This is a wage and hour individual, class, and representative action under
6 Code Civil Procedure § 382 and the Private Attorneys General Act (“PAGA”) of
7 2004, as amended, Labor Code §§ 2698, *et seq.* case seeking unpaid wages and
8 related remedies.

9 2. By this action, Plaintiffs seek all legal remedies available to them caused
10 by Defendants’ violations of California law.

11 **JURISDICTION AND VENUE**

12 3. Pursuant to Article VI, § 10 of the California Constitution, subject matter
13 jurisdiction is proper in the Superior Court of California, County of San Diego, State
14 of California because Plaintiffs allege claims arising under California law.

15 4. This Court has jurisdiction over the Defendants because each is an
16 association, corporation, business entity, or individual that conducts substantial
17 business in the State of California, County of San Diego.

18 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is
19 proper in the Superior Court of California for the County of San Diego because this is
20 where the wrongful misconduct alleged in this Complaint occurred.

21 **THE PARTIES**

22 6. Plaintiff ALVAN RAMIREZ is an individual that resides in San Diego
23 County, California.

24 7. Defendant KOLOA PACIFIC CONSTRUCTION INC. (“KOLOA”) is a
25 California corporation doing business in the San Diego County, California.

26 8. Defendant KERRY D. VINCI is an individual, and during all times
27 relevant is and was the Chief Executive Officer of Defendant KOLOA and, as such,
28 she/he is an “other person acting on behalf of an employer” within the meaning of

1 Labor Code §§ 558 and 558.1.

2 9. Defendant ERNEST H. GRABBE, JR. is an individual, and during all
3 times relevant is and was the Secretary/CFO for Defendant KOLOA and, as such,
4 she/he is an “other person acting on behalf of an employer” within the meaning of
5 Labor Code §§ 558 and 558.1.

6 10. The true names and capacities, whether individual, corporate, associate,
7 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
8 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
9 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
10 seek leave to amend this Complaint to allege the true names and capacities of DOES
11 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
12 believes, and based thereon alleges, that each of the DOE Defendants is in some
13 manner liable to Plaintiffs for the events and actions alleged herein. All named
14 Defendants and DOES 1 through 50 are collectively referred to as “Defendants.”

15 11. Plaintiffs are informed and believe, and based thereon allege that at all
16 times relevant herein each Defendant was acting as an agent, joint venture, or as an
17 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
18 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
19 that each is responsible for the acts of the other in connection with the conspiracy and
20 in proximate connection with the other Defendants.

21 12. Plaintiffs are informed and believe, and based thereon allege that each
22 Defendant was acting partly within and partly without the scope and course of their
23 employment, and was acting with the knowledge, permission, consent, and
24 ratification of every other Defendant.

25 13. Plaintiff are informed and believe, and based thereon allege that each of
26 the Defendants was an agent, managing general partner, managing member, owner,
27 co-owner, partner, employee, and/or representative of each of the Defendants, and
28 were at all times material hereto, acting within the purpose and scope of such agency,

1 employment, contract and/or representation, and that each of them are jointly and
2 severally liable to Plaintiffs for the acts alleged herein

3 14. Plaintiffs are informed and believe, and based thereon allege that each
4 of the Defendants are liable to Plaintiffs under legal theories and doctrines including
5 but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4)
6 alter ego, based in part, on the facts set forth below.

7 15. Plaintiffs are informed and believe, and based thereon allege that each of
8 the named Defendants are part of an integrated enterprise and have acted or currently
9 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
10 the wage and hour violations alleged herein.

11 **GENERAL ALLEGATIONS**

12 16. Defendants are in the construction business.

13 17. At all times relevant and within a year of this Complaint, Defendants
14 employed Plaintiff RAMIREZ on an hourly basis as a non-exempt nonunion worker
15 who performed work in San Diego, California from about October 13, 2019 until
16 Defendants terminated him on or about June 24, 2020.

17 **Failure to Provide Records Claims in Violation of Labor Code §§ 226 and 1198.5**

18 18. On or about July 7, 2020, Plaintiff RAMIREZ, via counsel, sent a letter
19 via Fax and regular U.S. Mail to Defendants requesting access to Plaintiff's payroll
20 records and employee personnel files.

21 19. On or about July 22, 2020, Defendants purportedly produced Plaintiff's
22 personnel file and what appeared to be copies of wage statements Defendants issued
23 to the Plaintiff during his employment.

24 20. Upon close inspection, however, when comparing the original wage
25 statements Defendants issued to the Plaintiff with the copies Defendants provided in
26 response to Plaintiff's letter of July 7, 2020, the copies do not match the originals.

27 21. In particular, Defendants' purported copies of Plaintiff's wage and
28 earnings statements do not show "all of the information required by" Labor Code §

1 226(a) because the original wage and earnings statements Defendants issued Plaintiff
2 were missing the employer's address required under § 226(a)(8) and they did not
3 include information regarding "Paid Time Off," two categories of information
4 suspiciously added to the copies Defendants provided in response to Plaintiff's letter
5 of July 7, 2020.

6 22. Moreover, Defendants did not provide all of Plaintiff's wage and earning
7 statements, the last pay date of which one was provided was May 1, 2020, yet
8 Defendants terminated Plaintiff on June 24, 2020.

9 23. On August 7, 2020, after the original Complaint in this case was filed
10 and served on the Defendant, Defendant provided Plaintiff's missing wage and
11 earning statements from May 1, 2020 to the date of this termination, but Defendant
12 neglected to provide a penalty payment for their untimely production or any other
13 records that may be responsive to Plaintiff's request for his personnel file, such as
14 Plaintiff's prevailing wage records within the meaning of Labor Code § 1776, *et seq.*

15 24. Based on the foregoing and among other things, Plaintiffs seek the
16 remedies set forth in this Complaint.

17 **Wage Statement Claims**

18 25. From at least four years before the filing of this action and continuing to
19 the present, and pursuant to company policy and/or practice and/or direction,
20 Plaintiffs are informed and believe, and therefore allege that Defendants issued
21 Plaintiff RAMIREZ and other Class Members erroneous wage and earning
22 statements.

23 26. In particular, the wage and earning statements Defendants issued to
24 Plaintiff RAMIREZ and presumably other Class Members are missing the "address of
25 the legal entity that is the employer" in violation of Labor Code § 226(8).

26 27. In addition to the foregoing stand-alone claim under Labor Code § 226,
27 Plaintiffs are informed and believe, and therefore allege that Plaintiff's paystubs and
28 those of similarly situated employees of Defendants were inaccurate because

1 Defendants failed to pay them all wages to which they had a right to receive, as
2 alleged herein, supporting a derivative claim under Labor Code § 226.

3 28. As to Plaintiffs' PAGA case, this claim is also premised, in part, on
4 Plaintiff's right to pursue all Labor Code claims on behalf of Aggrieved Employees
5 per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

6 **Wage Claims**

7 29. From at least four years before the filing of this action and continuing to
8 the present, and pursuant to company policy and/or practice and/or direction,
9 Plaintiffs are informed and believe, and therefore allege, that Defendants employed
10 Plaintiff RAMIREZ and Class Members to work on government projects and, upon
11 information and belief, Defendants did not pay Plaintiffs prevailing wages as required
12 by law.

13 30. Within the relevant period on various dates during his employment,
14 Defendants, for example, required Plaintiff RAMIREZ and Class Members to work
15 on a variety of construction projects believed to be public works projects, such as
16 Merge 56, San Diego Juvenile Hall, among other government projects evidenced in
17 Plaintiff's timesheets Defendants produced in response to Plaintiff's request for his
18 personnel file.

19 31. During the foregoing projects, Defendants directed Plaintiff RAMIREZ
20 to leave the truck he drove to the worksite to perform mechanical repairs on
21 construction equipment located on public works job sites, often spending hours
22 replacing parts, repairing equipment, refilling fluids that had run low, and other
23 manual labor on public works projects.

24 32. Defendants did not pay Plaintiff RAMIREZ and, upon information and
25 belief, other Class Members prevailing wages for their work on public works projects
26 despite Defendants' requirements under California law.

27 33. Plaintiffs are informed and believe and based thereupon allege that at
28 various times Defendants did not fully compensate Class Members for their labor

1 pursuant to the prevailing wage laws of California by, for example, making any fringe
2 benefit contributions that could offset the prevailing wage rate of pay for the
3 classification of their labor or paying the higher rate of pay as required under the
4 prevailing wage laws of California, among other reasons.

5 34. Plaintiffs are informed and believe and based thereupon allege that at
6 various times Defendants also did not comply with Labor Code § 1776 because
7 Defendants did not maintain or retain records required to be maintained per § 1776.

8 35. California's "prevailing wage is a minimum wage, and therefore the
9 workers may assert their express rights to recover their unpaid prevailing wages under
10 the minimum wage provisions of section 1194." (*Kirby v. Immoos Fire Prot., Inc.*
11 (2012) 53 Cal.4th 1244, 1252; *Road Sprinkler Fitters Local Union No. 669 v. G&G*
12 *Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 770.)

13 36. In addition to the foregoing, Defendants' written policy documented in
14 its Employee Handbook (page 27) provided Plaintiffs and similarly situated and
15 Represented Employees with paid vacation through an employer policy, which
16 purports to provide eligible employees with paid vacation to be accrued depending on
17 length of employment, starting with a minimum of working six months.

18 37. Plaintiff is informed and believes and based thereupon alleges that
19 Plaintiff RAMIREZ and other Aggrieved Employees worked long enough to accrue
20 vacation pay within the meaning of Defendants' vacation policy.

21 38. Plaintiff is informed and believes and based thereupon alleges that
22 Defendants failed to pay Plaintiff and, upon information and belief the
23 Class/Aggrieved Employees, accrued vacation pay, despite Plaintiff RAMIREZ
24 having worked more than six months per Defendants' Employee Handbook (page
25 27).

26 39. As to Plaintiffs' PAGA case, this claim is also premised, in part, on
27 Plaintiff's right to pursue all Labor Code claims on behalf of Aggrieved Employees
28 per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

Failure to Pay Meal and Rest Break Premiums

40. From at least four years before the filing of this action and continuing to the present, and pursuant to company policy and/or practice and/or direction, Plaintiffs are informed and believe and based thereupon allege that Defendants deprived Plaintiffs and other hourly employees from taking lawful meal and rest periods and did not pay and refused to pay premium pay Plaintiffs premium pay despite knowing its workers involuntarily missed their meal and rest breaks.

41. During all times relevant, for example, Defendants were on notice that Plaintiffs and, upon information and belief, other Aggrieved Employee, were not reporting the time taken for meal breaks on their timesheets or that their breaks were too late in the workday to comply with California law.

42. Further, based on the nature of work Defendants assigned the Plaintiffs, it was unreasonable in many circumstances, the exact amount to be proven at trial, for Plaintiffs to take an uninterrupted meal break because they often had to skip their meals to perform work on job sites before dusk, otherwise it would be too dark to see what they were doing.

43. On October 14, 2019, Plaintiff RAMIREZ, for example, worked from 8:00 a.m. to 4:00 p.m., more than seven hours and 59 minutes, and then took an untimely meal break at 4:00 p.m.

44. Similarly, on January 14, 2020, Plaintiff RAMIREZ, for example, worked from 9:00 a.m. to 4:00 p.m., and was deprived of taking a meal break due to the exigency of the job assignments Defendants issued him, the time of the year, and the darkness on the jobsites.

45. Also because of Defendants' policy, Defendants prevented Plaintiffs and Aggrieved Employees from taking all their uninterrupted rest breaks to which they had the right to enjoy in an amount to be proven at trial, and Defendants failed to pay them premium pay as required under California law. (*See Augustus v. ABM Security Services* (2016) 2 Cal.5th 257.)

1 46. As to Plaintiffs' PAGA case, this claim is also premised, in part, on
2 Plaintiff's right to pursue all Labor Code claims on behalf of Aggrieved Employees
3 per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

4 **Derivative Claims.**

5 47. From at least four years before the filing of this action and continuing to
6 the present, and pursuant to company policy and/or practice and/or direction,
7 Plaintiffs and others did not receive their final paychecks immediately upon
8 involuntary termination or within 72 hours of voluntary separation, were not paid
9 final wages at the location of employment, and said final paychecks did not include
10 all wages due to the employee.

11 48. Pursuant to the above-mentioned policies, Plaintiffs worked more than
12 40 hours a week and/or 8 hours in a workday.

13 49. Plaintiffs are informed and believe, and therefore allege, that Defendants
14 did not pay Plaintiffs time and a half for all wages as required by law.

15 50. When Defendants terminated Plaintiff RAMIREZ, Plaintiffs are
16 informed and believe, and therefore allege, that Defendants failed to pay Plaintiff
17 RAMIREZ, and other similarly situated workers, all unpaid wages in their final
18 paycheck or in a timely manner.

19 51. Based on the foregoing misconduct, Defendants issued Plaintiffs
20 erroneous paystubs.

21 52. To date, Plaintiffs are informed and believe, and therefore allege, that
22 Defendants have not paid Plaintiffs all of Plaintiffs' wages due and payable, in an
23 amount to be proven at trial.

24 53. As to Plaintiffs' PAGA case, Plaintiffs' derivative claims are also
25 premised, in part, on Plaintiff's right to pursue all Labor Code claims on behalf of
26 Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.* (2018) 23
27 Cal.App.5th 745.
28

REPRESENTATIVE ACTION (PAGA) CLAIMS

54. The duties and business activities of the Aggrieved Employees were essentially the same as the duties and activities of the Plaintiff described above.

55. This wage and hour representative action filed pursuant to PAGA, §§ 2698, 2699 generally consists of the following group:

All current or former nonexempt employees who worked in the state of California from August 11, 2019 to the present.

56. All members of the represented group will be referred to as the “Aggrieved Employees.”

57. The “Representative Period” means from **August 11, 2019 to the present.**

58. Plaintiff further alleges, on information and belief, that Aggrieved Employees, did not receive all wages due at the time their employment ended with Defendants.

59. On information and belief, Defendants current and former employees were subject to wage and hour violations by Defendants, including failing to be paid for all wages due.

60. California law provides that an employee may file an action against an employer for penalties in connection with violations of the Labor Code and Wage Orders provided the aggrieved employee file an action on behalf of him or herself and similarly situated current and former employees.

61. At all material times, Defendants and DOES 1 through 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved Employees’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

1 62. As set forth in further detail below, as a result of the analysis and
2 investigation of the Plaintiff's claims, Plaintiff's attorneys sent letters to the
3 California Labor and Workforce Development Agency (hereinafter referred to as
4 "LWDA") and to Defendants informing Defendants of Plaintiff's claims and
5 Plaintiff's intent to pursue litigation.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 63. As to penalty claims under PAGA, on **August 11, 2020**, Plaintiffs, *et al.*,
8 via counsel, sent correspondence to the LWDA and Defendants via certified U.S.
9 Mail indicating that Plaintiffs are pursuing the claims alleged in this Complaint.

10 64. The statutory period for Plaintiffs has expired for the letter alleged above
11 and the LWDA did not serve Plaintiffs with notice of intent to assume jurisdiction
12 over the applicable penalty claims and did not provide notice as set forth in Labor
13 Code § 2699.3(a)(2)(A) within the statutory period.

14 65. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies
15 to pursue claims and remedies as authorized by PAGA.

16 66. The Causes of Action alleged herein are appropriately suited for a
17 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

- 18 a. This action involves allegations of violations of provisions
19 of the California Labor Code that provide for a civil penalty to
20 be assessed and collected by the LWDA or any departments,
21 divisions, commissions, boards, agencies, or employees;
22 b. Plaintiffs are "aggrieved employees" because Plaintiffs were
23 employed by the alleged violator and had one or more of the
24 Labor Code violations alleged on this Complaint committed
25 against them; and
26 c. Plaintiffs have satisfied the procedural requirements of
27 Labor Code § 2699.3, as set forth above.
28

CLASS ACTION ALLEGATIONS

67. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a Class Action.

68. Plaintiffs seek to represent a class composed of and defined as follows:

All current and former employees who worked in the state of California from August 11, 2016 to the present for the Defendants

69. Plaintiffs also seek to represent the following subclasses defined as follows:

Unpaid Minimum/Prevailing Wage Subclass: All members of the Plaintiff Class who worked less than eight hours a day or less than 40 hours in a workweek on public works projects for Defendants in California as an hourly-paid non-exempt employee during the applicable statute of limitations period.

Unpaid Overtime/Prevailing Wage Subclass: All members of the Plaintiff Class who worked more than eight hours a day or more than 40 hours in a workweek on public works projects for Defendants in California as an hourly-paid non-exempt employee during the applicable statute of limitations period.

Unpaid Vacation Pay Subclass: All members of the Plaintiff Class who accrued and were not paid vacation by the Defendants pay during the applicable statute of limitations period.

Wage Statement Subclass: All members of the Plaintiff Class who worked for Defendants in California and did not receive accurate itemized wage statements as required by Labor Code § 226 during the applicable statute of limitations period.

Meal and Rest Break Subclass: All members of the Plaintiff Class who, during the applicable statute of limitations period worked for Defendants in California as an hourly-paid non-exempt employee and were not provided compliant meal and/or rest breaks and were not provided one hour of pay at their regular rate of compensation in lieu thereof during the applicable statute of limitations period.

Waiting Time Penalty Subclass: All nonexempt members of the Plaintiff Class whose employment was terminated during the applicable statute of limitations period and did not receive all wages in a timely manner as required by Labor Code §§ 201-204.

UCL Subclass: All Members of the Plaintiff Class, who, during the relevant period, Defendants owe restitution in the form of (1) unreimbursed expenses and/or (2) wages earned and unpaid because of Defendants' uniform pay policies and procedures.

70. The above-mentioned class-members will collectively be referred to as "Class Members."

71. Plaintiffs reserve the right to amend or modify the class description with greater specificity or further division into Classes or limitation to particular issues.

72. This action is brought and may properly be maintained as a Class Action because there is a well-defined community of interest in the litigation and the proposed Class Members are easily ascertainable.

A. Numerosity

73. The potential members of the Class as defined are so numerous or many, that joinder of all the members of the Class is impracticable.

74. While the precise number of Class Members has not been determined at the time, Defendants currently employ, and during the relevant time periods employed, more than 100 Class Members.

75. Accounting for employee turnover during the relevant periods necessarily increases the number substantially.

B. Commonality

76. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members.

77. Common questions of law and fact include, without limitation and subject to possible further amendment, the following:

- a. Whether Defendants' policy or practice of not paying Plaintiffs and other similarly situated employees' the lawful sum of compensation for the hours they worked on public works projects is illegal;
- b. Whether Defendants violated California Labor Code § 227.3 by failing to pay all vested vacation wages at the time of termination of employment;
- c. Whether Defendants violated Labor Code § 226 by not providing accurate paystubs to and other similarly situated employees;
- d. Whether Defendants violated the meal and rest break laws in California;
- e. Whether Defendants promptly paid all wages owed to Class members after the termination of the Class members' employment; and
- f. Whether Plaintiffs and the members of the Classes may recover remedies pursuant to Business & Professions Code §§ 17200, *et seq.*

C. Typicality

78. Plaintiffs' claims are typical of the claims of the respective Classes because Plaintiffs and members of the proposed Classes sustained similar injuries and damages arising out of and caused by Defendants' common courses of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

79. Plaintiffs do not have any conflicts of interest with other Class Members and will prosecute the case vigorously on behalf of the Classes.

80. Counsel representing Plaintiffs and the putative Classes are competent

1 and experienced in litigating employment class actions, including wage and overtime
2 class actions.

3 81. Plaintiffs will fairly and adequately represent and protect the interests of
4 the Class Members.

5 **E. Superiority of Class Action and Manageability**

6 82. A class action is superior to other available means for the fair and
7 efficient adjudication of the controversy because individual joinder of all Class
8 Members is not practicable, and questions of law and fact common to the Classes
9 predominate over any questions affecting only individual members of the Classes.

10 83. Each Class Member was damaged or suffered injury and may recover
11 remedies because of Defendants' illegal policies and/or practices.

12 84. Class Action treatment will allow those similarly situated persons to
13 litigate their claims in the manner that is most efficient and economical for the parties
14 and the judicial system.

15 85. Plaintiffs are unaware of any difficulties likely to be encountered in the
16 management of this action that would preclude maintenance as a Class Action.

17 86. At the appropriate time, Plaintiffs will present a trial methodology and
18 plan that will streamline the action, base liability and damages on common evidence
19 and common modes of proof through Defendants' corporate records, testimony of
20 corporate common policy and practices, representative evidence, sampled and
21 presented in a manner consistent with recognized scientific and statistical principles.

22 87. Such methodology may include bifurcation of liability and damages, the
23 use of professionally administered survey evidence, seeking adjudication of class-
24 wide legal issues of specific claims or preliminary factual issues, and other methods
25 or proposals to manage class-wide determinations common to all persons in the
26 proposed Class.

27 88. For the reasons alleged in this Complaint, this action should be certified
28 as a Class Action.

1 **FIRST CAUSE OF ACTION**

2 **Individual Claim for**

3 **Failure to Provide Access to Employee Personnel File**

4 **and Payroll Records in Violation of**

5 **California Labor Code §§ 226, 432, 1776, and 1198.5**

6 (Against all Defendants)

7 89. Plaintiff re-alleges and incorporates by reference the foregoing
8 allegations as though set forth herein.

9 90. California Labor Code § 226, subdivision (b), requires employers doing
10 business in the State of California to “afford current and former employees the right
11 to inspect or copy records pertaining to their employment, upon a reasonable request
12 to the employer...” and subdivision (c), requires employers to produce such records
13 within “21 calendar days from the date of the request.”

14 91. For the purposes of complying with California Labor Code § 226,
15 subdivision (a), a “‘copy’ includes a duplicate of the itemized statement provided to
16 an employee or a computer generated record that accurately shows all of the
17 information required by this subdivision.”

18 92. California Labor Code § 1198.5, *et seq.*, similarly provides current and
19 former employees the right to inspect their employee personnel records and requires
20 the employer to provide the employee access to such records no later than 30 calendar
21 days from the date the employer receives a written request.

22 93. California Labor Code § 1776, *et seq.*, similarly provides current and
23 former employees the right to inspect their employee prevailing wage records and
24 requires the employer to provide the employee access to such records no later than 30
25 calendar days from the date the employer receives a written request.

26 94. Plaintiff maintains the records he requested fall within the meaning of
27 Labor Code §§ 226, 432, 1776, and 1198.5, *et seq.* because they were part of and/or
28 related to Plaintiff’s personnel file.

96. Because of the statutory violations, Plaintiff suffered damages, in an amount to be determined according to proof at trial.

7 97. Further, Plaintiff is informed and believes and based thereon alleges that
8 Defendant continues to withhold records required to be provided under the foregoing
9 statutes and asserts he has been left without an adequate remedy at law, and should be
10 afforded the right to appropriate injunctive relief from this Court including, but not
11 limited to, an order by the Court requiring Defendants to turnover copies of remaining
12 portions, if any, of Plaintiff's complete employee personnel file.

13 98. Plaintiff seeks the recovery of costs and attorneys' fees as provided by
14 applicable law, including but not limited to California Labor Code § 226, subdivision
15 (h), § 1776, and § 1198.5, subdivision (l).

16 99. Plaintiff seeks the recovery of penalties as provided by applicable law,
17 including but not limited to California Labor Code §§ 226, subdivision (f) and 1198.5,
18 subdivision (k).

20 **Individual, Class, and Representative Claim via PAGA for**
21 **Failure to Pay State Minimum/Prevailing/Vacation Wages**
22 **in Violation of California Labor Code § 227.3, 1194, 1197, 1771, 1774, 1776,**
23 **1811, and 1815, and the applicable Wage Order**

100. Plaintiff re-alleges and incorporates by reference the foregoing
allegations as though set forth herein.

101. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
1815, and 1198, it is unlawful for a California employer to suffer or permit an

1 employee to work without paying wages for all hours worked, as required by the
2 applicable Industrial Welfare Commission (“IWC”) Wage Order.

3 102. Labor Code § 227.3 provides that “[u]nless otherwise provided by a
4 collective bargaining agreement, whenever a contract of employment or employer
5 policy provides for vacation time, all vested vacation shall be paid to him as wages in
6 accordance with such contract or employment or employer policy respecting
7 eligibility or time served; provided, however, that an employment contract or
8 employer policy shall not provide for the forfeiture of vested vacation time upon
9 termination.”

10 103. Plaintiffs are informed and believe and based thereupon allege that
11 during all times relevant, Plaintiffs were not paid minimum/regular/prevaling wages
12 for all hours suffered or permitted to work on public works projects in violation of
13 California law.

14 104. Plaintiffs are also informed and believe and based thereupon allege that
15 Defendants failed to pay Aggrieved Employees for vacation pay they accrued.

16 105. During all times relevant, Defendants were required to pay Plaintiffs and
17 other members of the Aggrieved Employees their respective hourly rate for all hours
18 worked and/or minimum wages and/or prevailing wages per state law or applicable
19 local law.

20 106. During all times relevant, at least one of the IWC Wage Orders applied
21 to Plaintiffs’ employment with Defendants.

22 107. Pursuant to the applicable Wage Order, “hours worked” include the time
23 during which an employee is “suffered or permitted to work, whether or not required
24 to do so.”

25 108. During the proposed Aggrieved Employees Period and based on the
26 misconduct alleged above, Defendants did not pay Plaintiffs and Aggrieved
27 Employees minimum/regular wages for all hours suffered or permitted to work in
28 violation of state and/or local law and/or prevailing wage law.

1 109. Labor Code § 1194 subdivision (a) permits an action to recover wages
2 because of the payment of a wage less than the minimum wage “applicable to the
3 employee” including attorneys’ fees, costs, and interest.

4 110. At all material times, Defendants were and/or are Aggrieved
5 Employees’ employers or persons acting on behalf of Aggrieved Employees’
6 employer, within the meaning of California Labor Code §§ 558 and 558.1, who
7 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
8 Labor Code or any provision regulating hours and days of work in any Order of the
9 Industrial Welfare Commission and, as such, are subject to civil penalties for each
10 underpaid employee as set for in Labor Code § 558.

11 111. In committing the violations of state law as herein alleged, Plaintiffs are
12 informed and believe based there upon allege that Defendants have knowingly and
13 willfully refused to perform their obligations to compensate Aggrieved Employees for
14 all wages earned and all hours worked.

15 112. As a direct result, Aggrieved Employees have suffered and continue to
16 suffer, substantial losses related to the use and enjoyment of such compensation,
17 wages, lost interest on such monies and expenses and attorneys’ fees in seeking to
18 compel Defendants to fully perform their obligations under state and/or local law.

19 113. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
20 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
21 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation in which Defendants violated
23 the minimum wage and/or regular wage provisions of the Labor Code, including but
24 not limited to §§ 216, 218, 218.5, 227.3, 558, 1194, 1197, 1197.1, 1771, 1774, 1776,
25 1811, 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable
26 penalty is all in an amount to be shown according to proof at trial.

27 114. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
28 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and

1 costs incurred herein.

2 115. Plaintiff and the Class also request the recovery of the unpaid wages,
3 waiting time penalties, liquidated damages, interest, attorneys' fees, and costs in an
4 amount to be determined at trial.

5 **THIRD CAUSE OF ACTION**

6 **Individual, Class, and Representative Claim via PAGA for**
7 **Failure to Pay State Overtime and/or Double-Time Compensation**
8 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,**
9 **1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, and the**
10 **Applicable IWC Wage Order**

11 (Against all Defendants)

12 116. Plaintiffs re-allege and incorporate by reference the foregoing allegations
13 as though set forth herein.

14 117. California law requires an employer to pay each employee for the actual
15 hours worked. (See Cal. Labor Code §§ 200, 226.)

16 118. During all times relevant, one or more of the IWC Wage Orders applied
17 to Plaintiffs' employment with Defendants.

18 119. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage
19 Order 15, "hours worked" include the time during which an employee is "suffered or
20 permitted to work, whether or not required to do so."

21 120. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable
22 Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40)
23 hours in a week and eight (8) hours in a day, the employer must pay the employee's
24 regular hourly wage.

25 121. For each hour (or fraction thereof) an employee works over forty (40)
26 hours in a week or more than eight (8) hours in a workday the employer must pay the
27 rate of one and a half times the employee's regular hourly wage.

28 122. For each hour (or fraction thereof) an employee works more than

1 twelve (12) hours in one day or more than eight (8) hours a day on the seventh
2 consecutive day of work, the employer must compensate the employee at the rate of
3 no less than twice the regular rate of pay for that employee.

4 123. During all times relevant, and pursuant to company policy and/or
5 practice and/or direction, Defendants required Plaintiffs and the Aggrieved
6 Employees to work more than 40 hours per week and/or eight hours in a workday on
7 public works projects to which they had the right to receive prevailing wages and
8 Defendants did not pay Plaintiff and the Aggrieved Employees all overtime
9 compensation to which they should have received at the prevailing wage rate.

10 124. As alleged herein, Defendants failed to pay Aggrieved Employees all
11 overtime to which they had a right to receive.

12 125. In committing the violations of state law as herein alleged, Defendants
13 have knowingly and willfully refused to perform their obligations to compensate
14 Aggrieved Employees for all wages earned and all hours worked.

15 126. At all material times, Defendants were and/or are Aggrieved Employees'
16 employers or persons acting on behalf of Aggrieved Employees' employer, within the
17 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
18 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
19 regulating hours and days of work in any Order of the Industrial Welfare Commission
20 and, as such, are subject to penalties for each underpaid employee as set for in Labor
21 Code § 558.

22 127. In committing the violations of state law as herein alleged, Defendants
23 have knowingly and willfully refused to perform their obligations to compensate
24 Aggrieved Employees for all wages earned and all hours worked.

25 128. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
26 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
27 period for the initial violation and two hundred (\$200.00) for each aggrieved
28 employee per pay period for each subsequent violation in which Defendants violated

1 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
2 and 1194, the exact amount of the penalties sought is in an amount to be shown
3 according to proof at trial.

4 129. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
5 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

6 130. Plaintiff and the Class also request the recovery of the unpaid wages,
7 waiting time penalties, liquidated damages, interest, attorneys' fees, and costs in an
8 amount to be determined at trial.

9 **FOURTH CAUSE OF ACTION**

10 **Individual, Class, and Representative Claim via PAGA for** 11 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 12 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b,** 13 **218.5, 218.6, 256, 1198 and the applicable Wage Order**

14 (Against all Defendants)

15 131. Plaintiffs re-allege and incorporate by reference the foregoing allegations
16 as though set forth herein.

17 132. Pursuant to Labor Code § 201, "If an employer discharges an employee,
18 the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

20 133. Pursuant to Labor Code § 202, "If an employee not having a written
21 contract for a definite period quits his or her employment, his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has
23 given 72 hours previous notice of his or her intention to quit, in which case the
24 employee is entitled to his or her wages at the time of quitting."

25 134. Labor Code § 203 provides, in pertinent part: "If an employer willfully
26 fails to pay, without abatement or reduction, ... any wages of an employee who is
27 discharged or who quits, the wages of the employee shall continue as a penalty from
28 the due date thereof at the same rate until paid or until an action therefore is

1 commenced; but the wages shall not continue for more than 30 days. ..."

2 135. Pursuant to Labor Code § 204, "all wages ... earned by any person in
3 any employment are due and payable twice during each calendar month, on days
4 designated in advance by the employer as the regular paydays."

5 136. Pursuant to Labor Code § 204b, "Labor performed by a weekly-paid
6 employee during any calendar week and prior to or on the regular payday shall be
7 paid for not later than the regular payday of the employer for such weekly-paid
8 employee falling during the following calendar week."

9 137. Defendants did not properly pay Plaintiff and Aggrieved Employees
10 pursuant to the requirements of Labor Code §§ 201, 202, 204 and/or 204b and thereby
11 Plaintiffs seek the unpaid wages.

12 138. To date, Defendants have not paid terminated Aggrieved Employees all
13 earned wages as required by law.

14 139. At all material times, Defendants and DOES 1 through 50 were and/or
15 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
16 Employees' employer, within the meaning of California Labor Code § 558, who
17 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
18 Labor Code or any provision regulating hours and days of work in any Order of the
19 Industrial Welfare Commission and, as such, are subject to penalties for each
20 underpaid employee as set for in Labor Code § 558.

21 140. In committing the violations of state law as herein alleged, Defendants
22 have knowingly and willfully refused to perform their obligations to compensate
23 Aggrieved Employees for all wages earned and all hours worked.

24 141. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
25 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
26 period for the initial violation and two hundred (\$200.00) for each aggrieved
27 employee per pay period for each subsequent violation in which Defendants violated
28 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

142. As alleged above, Defendants have deprived Plaintiffs and Aggrieved Employees of their rightfully earned wages as a direct and proximate result of Defendants' failure and refusal to pay said compensation and for the reasons alleged in this Complaint.

143. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs, damages, and other remedies pursuant to PAGA in an amount to be proven at trial.

144. Plaintiff and the Class also request the recovery of the waiting time penalties, interest, attorneys' fees, costs and related remedies in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

**Individual, Class, and Representative Claim via PAGA for
Failure to Comply with the Meal and Rest Break Requirements Under Labor
Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**

(Against all Defendants)

145. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

146. Based on the misconduct alleged in this Complaint, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for all their missed meal and rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

147. Because of Defendants' illegal pay practices, said Defendants failed to pay Plaintiff and Aggrieved Employees for all meal and rest breaks despite their requirement under California law and, as such, all culpable Defendants are required to pay Plaintiff and Aggrieved Employees for rest break and/or meal break premium wages.

148. Defendants also failed to provide Plaintiff, and Aggrieved Employees, legally-compliant meal and rest periods, or compensation in lieu thereof, during their employment by said Defendants.

149. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
3 pay period for each subsequent violation in which all culpable Defendants violated
4 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
5 an amount to be shown according to proof at trial.

6 150. Wherefore, Plaintiffs request all remedies available to them and to the
7 Aggrieved Employees pursuant to PAGA.

8 151. Plaintiff and the Class also request the recovery of the unpaid premium
9 pay, interest, attorneys' fees, costs, and related remedies in an amount to be
10 determined at trial.

11 **SIXTH CAUSE OF ACTION**

12 **Individual, Class, and Representative Claim via PAGA for** 13 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,** 14 **and the applicable IWC Wage Order**

15 (Against all Defendants)

16 152. Plaintiffs re-allege and incorporate by reference the foregoing allegations
17 as though set forth herein.

18 153. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
19 pertinent part, that every employer shall, "semimonthly or at the time of each
20 payment of wages, shall furnish to his or her employees, either as a detachable part of
21 the check, draft, or voucher paying the employee's wages, or separately if wages are
22 paid by personal check or cash, an accurate itemized statement in writing showing (1)
23 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
24 piece-rate units earned and any applicable piece rate if the employee is paid on a
25 piece-rate basis, (4) all deductions, provided that all deductions made on written
26 orders of the employee may be aggregated and shown as one item, (5) net wages
27 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of his or her social security

1 number..., (8) the name and address of the legal entity that is the employer. . . , and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee and, beginning July 1,
4 2013, if the employer is a temporary services employer as defined in Section 201.3,
5 the rate of pay and the total hours worked for each temporary services assignment. . .”
6 (Labor Code § 226 subdivision (a).)

7 154. Upon information and belief, during all times relevant to this action,
8 Defendants did not provide accurate wage statements throughout the Aggrieved
9 Employees Period and, thus, Plaintiffs assert this claim both as a stand-alone claim
10 and derivative of their unpaid wage claims.

11 155. On numerous occasions, an exact amount by which will be proven at
12 trial, Defendants violated various provisions of § 226, including but not limited to
13 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) by failing to provide Plaintiffs and
14 the Aggrieved Employees accurate itemized statement in writing accurately showing
15 gross wages earned, total hours worked by the employee, net wages earned, rates of
16 pay, among other things.

17 156. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
18 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
19 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
20 pay period for each subsequent violation in which all culpable Defendants violated
21 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
22 of the applicable penalty is all in an amount to be shown according to proof at trial.

23 157. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
24 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
25 costs incurred herein under §§ 226, 226.3, and 226.6 in an amount to be proven at
26 trial.

27 158. Plaintiff and the Class also request the recovery of penalties, damages,
28 interest, attorneys’ fees, costs, and related remedies in an amount to be determined at

1 trial.

2 **SEVENTH CAUSE OF ACTION**

3 **Representative Claim for PAGA Penalties**

4 **For Failure to Maintain Required Records in Violation of California**
5 **Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198**
6 **(Against Defendant KOLOA and DOES 1-100)**

7 159. As a separate and distinct cause of action, Plaintiff re-alleges and
8 incorporates by reference, as though fully set forth herein, all the allegations
9 contained in this Complaint, excepting those allegations that are inconsistent with this
10 cause of action.

11 160. Section 7 of the typical Wage Order requires every employer to maintain
12 time and payroll records.

13 161. Plaintiffs are informed and believe and based thereon alleges that during
14 all times relevant, Defendants failed to comply with § 7 of the applicable IWC Orders
15 and with Labor Code § 1174 by failing to maintain certain records which employers
16 are required to maintain, including but not limited to, an accurate record indicating
17 the number hours worked by the Plaintiffs.

18 162. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
19 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
20 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation in which all culpable Defendants violated
22 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
23 of the applicable penalty is all in an amount to be shown according to proof at trial.

24 163. For the reasons alleged herein, Plaintiffs seek all available remedies
25 pursuant to PAGA in an amount to be proven at trial including but not limited to
26 penalties, attorneys' fees, costs, and interest pursuant to law.
27
28

1 **EIGHTH CAUSE OF ACTION**

2 **Claim for Remedies for Violation of the**
3 **California Unfair Business Practices Code §§ 17200, *et seq.***

4 (Against all Defendants)

5 164. As a separate and distinct cause of action, Plaintiff re-alleges and
6 incorporates by reference, as though fully set forth herein, all the allegations
7 contained in this Complaint, excepting those allegations that are inconsistent with this
8 cause of action.

9 165. Defendants, and each of them, are “persons” as defined under Business
10 and Professions Code § 17021.

11 166. Plaintiffs are informed and believe and based thereon allege that
12 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
13 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
14 Complaint and which allegations are incorporated herein by reference and which
15 allegations include, but are not limited to:

- 16 a. Failing to provide the Class and Plaintiff an accurate itemized
17 wage statement in violation of § 226 of the Labor Code;
18 b. Failing to pay meal and rest break premiums;
19 c. Failing to pay the Class and Plaintiff all wages due and owing
20 including minimum/regular/prevaling wages and overtime
21 compensation; and
22 d. Failure to pay Class Members, including Plaintiff, wages in a
23 timely manner upon their termination or resignation.

24 167. Defendants’ conduct, as alleged above, constitutes unlawful, unfair, and
25 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

26 168. The unlawful and unfair business practices conducted by Defendants,
27 and each of them, are ongoing and present a threat and likelihood of continuing
28 against Plaintiffs and, accordingly, Plaintiff seeks injunctive relief where appropriate.

1 169. Plaintiffs have suffered injuries in fact and lost money or property
2 because of the above alleged unfair competition.

3 170. Because of their improper acts, Defendants, and each of them, have
4 reaped and continue to reap unfair benefits and illegal profits at the expense of
5 Plaintiff and other employees and former employees of Defendants, and each of
6 them.

7 171. Defendants, and each of them, should be enjoined from this activity and
8 made to disgorge these ill-gotten gains and restore to Plaintiff and the Class the
9 wrongfully withheld wages and/or penalties, pursuant to Business and Professions
10 Code §§ 17202 and/or 17203.

11 172. Plaintiff and the Class have also incurred and continue to incur attorneys'
12 fees and legal expenses in an amount according to proof at the time of trial and for
13 which they seek compensation pursuant to law including but not limited to Code of
14 Civil Procedure § 1021.5.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 17 1. An order that this action may proceed and be maintained as a class action;
- 18 2. For appointment of Plaintiff RAMIREZ as the representative of the Class;
- 19 3. For appointment of Plaintiffs' counsel as Class Counsel;
- 20 4. That Defendants be found liable to Plaintiffs;
- 21 5. That Defendants, and each of them, be ordered and enjoined to pay
22 restitution to Plaintiff and/or the Class and/or Aggrieved Employees
23 pursuant to Business and Professions Code §§ 17200-05;
- 24 6. That Defendants, and each of them, be required to issue to Plaintiff and/or
25 the Class and/or Aggrieved Employees accurate wage and earning
26 statements;
- 27 7. For disgorgement through restitution of all ill-gotten and/or ill-gained
28 profits, including unpaid wages and/or penalties to Plaintiff and/or the Class

- 1 and/or Aggrieved Employees, resulting from Defendants' unfair business
2 practices pursuant to Business and Professions Code §§ 17200-05;
- 3 8. For an order by the Court requiring Defendants, and each of them, to show
4 cause, if any they have, as to why to Plaintiff and/or the Class and/or
5 Aggrieved Employees should not have been issued itemized wage
6 statements as required by § 226 of the Labor Code and why Defendants
7 should not be required to pay Plaintiff minimum wages and overtime
8 compensation under applicable state law;
- 9 9. For all remedies available to Plaintiff under the applicable provisions of the
10 Labor Code via PAGA Labor Code § 2698, *et seq.* including an award of
11 attorneys' fees, costs, interest, liquidated damages, damages, penalties and
12 waiting time penalties according to proof to the extent permitted by law;
- 13 10. For maximum civil penalties available under the Labor Code and
14 applicable Wage Order as described more particularly in this Complaint,
15 representative PAGA claims including the payment of wages as set forth in
16 Labor Code § 558;
- 17 11. For Labor Code § 203 penalties in an amount to be proven at trial;
- 18 12. For special and general damages;
- 19 13. That Plaintiff and/or the Class and/or Aggrieved Employees be awarded
20 reasonable attorneys' fees where available by law, including but not limited
21 to pursuant to Labor Code §§ 2698, *et seq.*, Code of Civil Procedure §
22 1021.5, and/or other applicable laws; and
- 23 14. For any other relief the Court may deem just, proper and equitable in the
24 circumstances.

25 Dated: November 27, 2020

26 By: Thomas D. Rutledge
27 /s/Thomas D. Rutledge, Esq.
28 Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

3 COUNTY OF SAN DIEGO

4 I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of
5 San Diego, State of California; I am over the age of 18 and not a party to the within
6 action; my business address is 113 West G Street, Suite 231, San Diego, California
92101.

7 On November 27, 2020, I served the foregoing document(s) described as:

8 **THIRD AMENDED COMPLAINT**

9 on the interested parties to this action by placing a copy thereof enclosed in a sealed
10 envelope addressed as follows: **See Attached List.**

11 ☒ **(BY MAIL)** I am readily familiar with the business practice for collection and
12 processing of correspondence for mailing with the United States Postal Service. This
13 correspondence was deposited with the United States Postal Service this same day in
14 the ordinary course of business at our Firm's office address in San Diego, California.
Service made pursuant to this paragraph, upon motion of a party served, shall be
presumed invalid if the postal cancellation date of postage meter date on the envelope
is more than one day after the date of deposit for mailing contained in this affidavit.

15 ☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for
16 collection and processing of correspondence for emailing with the Court authorized
third-party vendor. This correspondence was sent via email via this third-party vendor
pursuant to the vendor's policies and practices.

17 ☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by
18 Federal Express, an express service carrier which provides overnight delivery, as
19 follows. I placed true copies of the foregoing document in sealed envelopes or
packages designated by the express service carrier, addressed to each interested party
as set forth above, with fees for overnight delivery paid or provided for.

20 ☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to
21 the offices of the above named addressee(s).

22 ☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the
23 offices of the addressee(s) at the following facsimile number:

24 Executed November 27, 2020, at San Diego, California.

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

26 THOMAS D. RUTLEDGE
27 /s/THOMAS D. RUTLEDGE
28

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