

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Commercial Concrete Constructors, Inc., a California Corporation; and Does 1 through 50, Inclusive

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Jose Contreras, in his representative capacity

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

DEC 11 2020

BY Guadalupe Vasquez DEPUTY  
Guadalupe Vasquez

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):  
San Bernardino County Superior Court - Civil Division  
247 West 3rd Street, San Bernardino, CA 92415-0210

CASE NUMBER: (Número del Caso):

CIV SB 2026628

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Graham S.P. Hollis (SBN 120577); Vilmarie Cordero (SBN 268860); 3555 Fifth Avenue, Suite 200, San Diego, CA 92103; 619-692-0880

Monique R. Rodriguez (SBN 304223)

DATE: DEC 11 2020

Clerk, by Deputy  
(Secretario) Guadalupe Vasquez (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]

COPY

### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date)

GRAHAMHOLLIS APC  
3555 FIFTH AVENUE SUITE 200  
SAN DIEGO, CALIFORNIA 92103

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7 Attorneys for Plaintiff Jose Contreras

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO

10  
11 JOSE CONTRERAS, in his representative  
capacity,

12 Plaintiff

13 v.

14 COMMERCIAL CONCRETE  
15 CONSTRUCTORS, INC., a California  
Corporation; and DOES 1 THROUGH 50,  
16 Inclusive,

17 Defendants  
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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

DEC 11 2020

BY Guadalupe Vasquez DEPUTY

Case No.: CIV SB 2026628

Unlimited Civil-  
Amount Demanded Exceeds \$25,000.00

**REPRESENTATIVE ACTION FOR CIVIL  
PENALTIES PURSUANT TO THE PRIVATE  
ATTORNEYS GENERAL ACT OF 2004  
(Labor Code §§ 2698 et seq.)**

1. Failure to Provide Legally Compliant Meal Periods or Compensation in Lieu Thereof;
2. Failure to Provide Legally Compliant Rest Periods or Compensation in Lieu Thereof;
3. Failure to Timely Pay Minimum, Regular, and/or Overtime Wages;
4. Failure to Timely Pay Reporting Time Wages;
5. Failure to Timely Pay All Wages Due and Owing Upon Separation of Employment;
6. Failure to Reimburse for Necessary Business Expenses;
7. Failure to Furnish Accurate Itemized Wage Statements;
8. Failure to Maintain Accurate Records; and
9. Retaliation Against Employees Who Make Good-Faith Complaints About Unlawful Working Conditions.

Plaintiff Jose Contreras (“Plaintiff”) brings this action in his representative capacity against Defendant Commercial Concrete Constructors, Inc. and Does 1 through 50, inclusive, (collectively, “Defendants” or the “Company”) on the following grounds:

**I.**

**INTRODUCTION**

1. Plaintiff brings this representative action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of himself and all other current or former non-exempt employees of Defendants in California (“Company Employees”).

2. Plaintiff asserts that during the relevant time period the Company engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders to decrease their employment related costs by, among other things:

- a. Failing to provide legally compliant meal periods or compensation in lieu thereof;
- b. Failing to provide legally compliant rest periods or compensation in lieu thereof;
- c. Failing to timely pay all minimum, regular, and/or overtime wages;
- d. Failing to timely pay all reporting time wages;
- e. Failing to timely pay all wages owed and due at the time of separation and/or the required waiting time penalties;
- f. Failing to reimburse for necessary business expenses;
- g. Failing to furnish accurate itemized wage statements;
- h. Failing to maintain accurate records; and
- i. Engaging in retaliation against employees who exercise their legal rights.

3. By and through this representative action pursuant to the PAGA, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, attorneys’ fees, and litigation costs on behalf of himself and all other Company Employees, the general public, and the state of California.

4. All allegations in this Complaint are based upon information and belief, except those allegations specifically pertaining to Plaintiff and/or his counsel of record, which are based upon personal knowledge. Each of the allegations in this Complaint either has evidentiary support or is likely to have

evidentiary support after a reasonable opportunity for further investigation and formal discovery.

## II.

### PARTIES

#### A. PLAINTIFF

5. Plaintiff Jose Contreras at all material times mentioned herein:

- a. Was and is a resident of the County of Riverside;
- b. Was employed by Defendants from approximately July 2019 to January 2020 as a General Laborer;
- c. Engaged in work for Defendants in and around the County of San Bernardino, California, including in the City of Ontario;
- d. Earned an hourly wage and was to be paid every Friday;
- e. Was classified by Defendants as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- f. Regularly worked at least eight (8) hours per shift and/or forty (40) hours per week;
- g. Was not provided with legally compliant meal periods and/or compensation in lieu thereof;
- h. Was not provided with legally compliant rest periods and/or compensation in lieu thereof;
- i. Was not timely compensated at the appropriate minimum, regular and/or overtime wages for all time worked;
- j. Was not timely paid reporting time;
- k. Was not timely paid all wages due and payable upon termination of the employment relationship;
- l. Was not paid waiting time penalties as provided for under California law;
- m. Was not reimbursed for all necessary business expenses;
- n. Was not furnished with accurate itemized wage statements;
- o. Was not provided with written notice of sick leave;
- p. Contends his employment records, such as his payroll and time records, were not

accurately maintained by Defendants;

q. Was retaliated against by Defendants after making a good-faith complaint to the Human Resources department about unsafe and unlawful working conditions;

r. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and

s. Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

**B. DEFENDANT**

6. Defendant Commercial Concrete Constructors, Inc. (“Commercial Concrete”), is a California corporation authorized to do business in the state of California and according to the California Secretary of State website, prior to April 2019, was known as Fullmer Concrete Construction. Commercial Concrete is headquartered in Ontario, California, within San Bernardino County. Commercial Concrete is in the concrete construction industry and provides services including, but not limited to, concrete repair, tilt up walls, foundations, slabs, and commercial concrete throughout Southern California.

7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendants Does 1 through 50, inclusive, are presently unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

8. At all times mentioned herein, the acts alleged to have been done and/or caused by the named defendants are also alleged to have been done and/or caused by the fictitiously named defendants and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

9. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, including each fictitiously named defendant, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

10. At all times mentioned herein, the acts and/or omissions of each named defendant, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm and/or damages alleged herein. Defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Defendants, including each fictitiously named defendant, were and are acting with the authority of each and every other defendant and/or are acting as agents of each and every other defendant.

11. At all times mentioned herein there was a unity of interest and ownership between Defendants and each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other Company Employees.

12. At all times mentioned herein Defendants and each of the fictitiously named defendants, exercised supervision and control over the working conditions of Plaintiff and all other Company Employees including, but not limited to, implementing standard policies and procedures.

### III.

#### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this action pursuant to Code of Civil Procedure § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff brings this action in his representative capacity on behalf of himself and all Company Employees.

14. This Court has personal jurisdiction over Defendants because Defendants conduct business in the state of California and have caused injuries in the County of San Bernardino, as well as throughout the state of California, through their acts and/or omissions, and by and through their violations of the Labor Code and the IWC Wage Order 16-2001, as alleged herein.

15. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5 because Defendants transact business, maintain their principal offices, and/or have an agent in San Bernardino County and/or Defendants are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Company Employees within San Bernardino County and the state of California.

#### IV.

## FACTUAL ALLEGATIONS

17. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

18. Plaintiff was employed by Commercial Concrete Constructors, Inc. as a General Laborer from about July 2019 to January 2020. Plaintiff worked at various locations throughout Southern California, including in Ontario, California. As a General Laborer, Plaintiff's job duties included, but were not limited to, assisting the foremen and supervisors with projects, unloading and carrying materials on construction site, running wheelbarrow and pouring concrete from mixer trucks, and regulating concrete disbursement, as well as any other tasks designated by any supervisor. During his employment, Plaintiff was classified by Commercial Concrete Constructors, Inc. as a non-exempt employee, was to earn an hourly wage of \$20.00, and was to be paid every Friday. Plaintiff often worked Monday to Friday from 6:00 a.m. until about 2:00 p.m. and/or 11:00 p.m. to 8:00 a.m. during his employment.

19. Plaintiff asserts that Defendants employ, and will continue to employ, Company Employees throughout the state of California.

20. Plaintiff contends that Company Employees are all “employees” as the term is used in the Labor Code and the applicable IWC Wage Order regulating wages, hours, and working conditions in the state of California.

21. Plaintiff contends that all Company Employees were subject to the same and/or similar policies, practices, procedures and/or guidelines described herein.

22. Plaintiff further alleges that he and other Company Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

23. Plaintiff contends that the Company did not, and does not, have a policy, practice, guideline, procedure and/or culture of providing Company Employees with an opportunity to take a thirty (30)

1 minute off-duty meal period when they worked five (5) or more hours, nor does the Company have a  
2 policy, practice, guideline, procedure, and/or culture of providing a second off-duty meal period to  
3 Company Employees when they worked more than ten (10) hours.

4 24. Plaintiff contends that the Company had, and continues to have, a policy, practice,  
5 procedure, and/or guideline of not requiring Company Employees to clock in and out for meal periods in  
6 violation of California law. Instead, the Company has a policy, practice, procedure, and/or guideline of  
7 automatically deducting thirty (30) minutes for a meal period without regard to whether Plaintiff and other  
8 Company Employees were actually provided with the opportunity to take legally compliant meal periods.  
9 Alternatively, the foremen were instructed by the Company, and did in fact, clock Company Employees  
10 in and out for meal periods irrespective of whether the Company Employees, such as Plaintiff, were  
11 actually provided with the opportunity to take a legally compliant meal period.

12 25. Additionally, Plaintiff alleges that he and other Company Employees, were not provided  
13 with the opportunity to take meal periods that were at least thirty (30) minutes in duration, free from  
14 interruption, and/or free from the Company's control. For example, when working in the day Plaintiff and,  
15 on information and belief, other Company Employees, typically had their meal periods scheduled from  
16 11:30 a.m. to 12:00 p.m., after the fifth hour of work, thus consistently resulting in meal periods that  
17 occurred after the fifth hour of work. Plaintiff also alleges that several days a week he and other Company  
18 Employees were not given the opportunity to take legally complaint meal periods due to the workload,  
19 which required them to work through their meal periods, take late meal periods, or take meal periods of  
20 less than thirty (30) minutes. Moreover, Plaintiff also alleges that he and other Company Employees were  
21 often directed to return to work prior to the end of their meal periods and/or were interrupted by their  
22 foremen or other management positions to perform work during their meal periods. Plaintiff further alleges  
23 that he and other Company Employees were not permitted to leave the work premises during their meal  
24 periods. Thus, the Company failed to provide Company Employees with legally compliant meal periods.

25 26. Plaintiff further attests that he and other Company Employees were required by the  
26 Company to sign a document entitled "ON-Duty Meal Period Agreement," wherein the Company  
27 Employees allegedly agreed to take an on-duty meal period because the nature of their work supposedly  
28 prevented them from taking legally complaint meal periods. However, Plaintiff contends that the

1 agreement is unlawful as it does not meet the requirements provided under California Law including, but  
2 not limited to, informing the Company Employees that they can revoke the agreement at any time.  
3 Additionally, Plaintiff contends that the Company's use and implementation of on-duty meal periods is  
4 unlawful as the nature of the work performed by Company Employees is not one that prevents the  
5 Company Employees from being relieved of all duty as there are other reasonable alternatives that the  
6 Company can take to ensure that Company Employees are relieved of all duties including, but not limited  
7 to, scheduling more laborers to work on a given shift and scheduling staggered meal periods for laborers,  
8 as examples.

9         27. Plaintiff contends that he and other Company Employees were not authorized and  
10 permitted to take legally compliant rest periods. For instance, the Company had, and continues to have, a  
11 policy, practice, procedure, and/or guideline of only allowing Company Employees, including Plaintiff,  
12 to take one rest period per workday irrespective of the total number of hours that Plaintiff and Company  
13 Employees actually worked. Plaintiff and, on information and belief, other Company Employees regularly  
14 worked at least eight-hour shifts, therefore entitling them to at least two (2) ten (10) minute rest periods  
15 per workday. Additionally, the Company had, and continues to have, a policy, practice, procedure, and/or  
16 guideline of not permitting Company Employees to leave the premises during rest periods, as well as not  
17 relinquishing control over how Company Employees spend their rest periods. Furthermore, the Company  
18 had, and continues to have, a policy, practice, procedure, and/or guideline of not authorizing and  
19 permitting Company Employees, such as Plaintiff, to take a single rest period when working a nighttime  
20 shift, even though they regularly worked more than four hours in a workday. As a result, Plaintiff, and on  
21 information and belief, other Company Employees were denied, and continue to be denied, their legal  
22 right to take legally compliant rest periods.

23         28. Although Plaintiff and, on information and belief, other Company Employees did not  
24 receive legally compliant meal and/or rest periods, the Company had, and continues to have, a policy,  
25 practice, procedure and/or guideline of not consistently paying Plaintiff and other Company Employees  
26 the additional one hour of pay at the employee's regular rate of pay. Therefore, the Company owes  
27 Plaintiff and, on information and belief, other Company Employees premium wages for each workday  
28 that Plaintiff and other Company Employees were not provided with a legally compliant meal and/or rest

1 period.

2 29. Plaintiff asserts that the Company had, and continues to have a policy, practice, procedure,  
3 and/or guideline of failing to timely compensate Company Employees, including Plaintiff, all minimum,  
4 regular, and/or overtime wages for all time actually worked. For example, the Company had, and continues  
5 to have, a policy, practice, procedure, and/or guideline of directing and/or otherwise regularly permitting  
6 foremen and other supervisory positions to clock in and out for Company Employees, such as Plaintiff, as  
7 well as adjust time records without the Company Employees' consent. Plaintiff contends that he and other  
8 Company Employees were not timely or properly paid all minimum, regular, and/or overtime hours on  
9 the regular pay days designated by the Company because foremen and other supervisory positions often  
10 altered their time records by reducing the time actually worked by the Company Employees. Foreman and  
11 other supervisory positions also recorded legally compliant meal periods irrespective of whether a legally  
12 compliant meal period was actually taken, thereby depriving Company Employees, including Plaintiff of  
13 premium wages for non-compliant meal periods.

14 30. Plaintiff and other Company Employees were not timely paid premium wages for non-  
15 compliant meal and/or rest periods due to the Company's policy, practice, procedure and/or guideline of  
16 not properly paying premium wages for non-compliant meal and/or rest periods.

17 31. Plaintiff further contends that the Company had, and continues to have, a policy, practice,  
18 procedure, and/or guideline of requiring Company Employees, including Plaintiff, to respond to work  
19 communications after their scheduled work hours without compensation for such time. Plaintiff asserts  
20 that the Company concealed the fact that Company Employees were entitled to compensation for such  
21 time, including by allowing foreman and other supervisory positions to enter Company Employee time,  
22 instead of the Company Employee. Therefore, Plaintiff and other Company Employees did not receive  
23 minimum, regular, and/or overtime wages on the regular pay days designated by the Company for such  
24 time.

25 32. Plaintiff also asserts that the Company had, and continues to have, policy, practice,  
26 procedure, and/or guideline of willfully failing to timely pay reporting time wages to Plaintiff and other  
27 Company Employees. For instance, Plaintiff contends that although he and other Company Employees  
28 were required to arrive at their worksite for their scheduled shift only to be sent home and/or telephoned

1 the Company prior to the start of a shift and told that they did not need to appear for the shift, he and other  
2 Company Employees were not paid reporting time wages nor were they paid for half of their usual or  
3 scheduled day's work.

4 33. Plaintiff further alleges that he and other Company Employees have yet to be paid their  
5 minimum, regular, and/or overtime wages for all time worked, premium wages for all non-compliant meal  
6 and/or rest periods, and/or reporting time wages.

7 34. Plaintiff contends that the Company has, and continues to have, a policy, practice,  
8 procedure and/or guideline of not timely paying all wages due and owing upon separation of employment.  
9 For example, the Company has, and continues to have, a policy, practice, procedure, and/or guideline of  
10 directing and/or otherwise regularly permitting foremen and other management positions to clock in and  
11 out for Company Employees, as well as adjusting time records without the Company Employee's consent.  
12 As a result, Company Employees, including Plaintiff, were not properly paid all minimum, regular and/or  
13 overtime wages for all hours actually worked because foremen and other management positions often  
14 reduced the time worked by Company Employees. Foremen and other management positions also  
15 recorded legally compliant meal periods regardless of whether a legally compliant meal period was  
16 actually taken, therefore depriving Company Employees of wages. Plaintiff and other Company  
17 Employees should have been afforded minimum, regular, and/or overtime wages for the time that  
18 Company Employees, including Plaintiff, were actually engaged in work, as well as the time spent  
19 engaged in work during their alleged meal and/or rest periods. Plaintiff and other Company Employees  
20 should have been paid premium wages for non-compliant meal and/or rest periods.

21 35. Plaintiff alleges that the Company has, and continues to have, a policy, practice, procedure  
22 and/or guideline of not paying the requisite waiting time penalties. The Company has failed to pay the  
23 required waiting time penalties for failing to timely pay all wages due and owing upon separation of  
24 employment.

25 36. Plaintiff asserts that the Company has, and continues to have, a policy, practice, procedure  
26 and/or guideline of failing to reimburse him and other Company Employees for all necessary expenses  
27 that were incurred in the discharge of their job duties. For example, at the end of each shift Plaintiff and,  
28 on information and belief, other Company Employees typically received a phone call and/or text message

1 to their personal cell phones with the location and time information for their next shift. Additionally,  
2 Plaintiff and other Company Employees were required, and are still required, to use their personal cell  
3 phones after work hours to receive phone calls and/or text messages about where they would be scheduled  
4 to work the following day. Furthermore, Plaintiff, and Company Employees were required, and are still  
5 required, to communicate throughout the workday with co-workers and supervisors on their personal cell  
6 phones. Despite the mandated and frequent use of their personal cell phones, Plaintiff and other Company  
7 Employees did not receive reimbursement for these business expenses as required by California law.

8         37. Plaintiff asserts that the Company has, and continues to have, a policy, practice, procedure,  
9 and/or guideline of failing to furnish Company Employees, including Plaintiff, with accurate itemized  
10 wage statements. For example, Plaintiff asserts that the wage statements furnished by the Company did  
11 not accurately reflect the number of hours actually worked by Company Employees and/or the various  
12 rates of pay, including overtime and reporting time, and the gross and net wages earned. The wage  
13 statements also do not include the correct number of regular and overtime hours actually worked, reporting  
14 time hours, and the respective hourly rates for such time. The wage statements further do not include meal  
15 and/or rest period premium wages for non-compliant meal and/or rest periods. Moreover, the wage  
16 statements do not include the correct name of the employer, nor the employer's address, particularly as  
17 the wage statements listed, and continue to list, Fullmer Concrete Construction as the employer instead of  
18 the legal name of the employer, Commercial Concrete Constructors, Inc. Further, the wage statements  
19 fail to reflect the correct number of sick hours accrued and sick hours used.

20         38. Plaintiff contends that the Company has, and continues to have, a policy, practice,  
21 procedure, and/or guideline of failing to keep and maintain accurate records reflecting, for example, all of  
22 Plaintiff's and other Company Employees' actual hours worked, meal periods taken, and wages earned  
23 and paid. For instance, the Company had, and continues to have, a policy, practice, procedure, and/or  
24 guideline of automatically deducting thirty (30) minutes for a meal period without regard to whether the  
25 employee actually received the opportunity to take a legally compliant meal period or was relieved from  
26 all work duties during that period, thereby adjusting time records to reduce the total number of hours  
27 worked by the employees. Additionally, the Company had, and continues to have, a policy, practice,  
28 procedure, and/or guideline of permitting foremen to clock in and out for the Company Employees, which

1 resulted in Company Employees having inaccurate time records. In addition, the wage statements  
2 furnished by the Company to Company Employees did not, and still do not include, among other things,  
3 the correct amount of gross and net wages actually earned, total hours actually worked by the employee,  
4 and all applicable hourly rates in effect during the pay period and the corresponding number of hours  
5 worked at each hourly rate by the employee. Plaintiff contends that the Company's records do not include  
6 the correct number of regular and overtime hours and respective hourly rates for Plaintiff and other  
7 Company Employees when the Company failed to pay the legal minimum, standard, overtime, and/or  
8 reporting wages to Company Employees. The Company also did not, and does not, maintain an accurate  
9 record of the number of sick hours accrued and used by Company Employees. For these reasons, the  
10 Company has failed to keep and maintain accurate records.

11 39. Plaintiff contends that the Company has, and continues to have, a policy, practice,  
12 procedure, guideline, and/or culture of retaliating against Company Employees who make good faith  
13 complaints about unlawful and/or unsafe conditions in the workplace. For instance, Plaintiff was  
14 terminated from his employment a few weeks after verbally reporting instances of physical and verbal  
15 harassment—including physical altercations—by one of his foremen, Ignacio Villagomez (aka "Nacho")  
16 to his manager Mitch Wahl and to human resources. In addition, Plaintiff verbally reported to his manager  
17 and to human resources that he was not receiving legally compliant meal and/or rest periods and that his  
18 supervisors were adjusting his time records without authorization. The Company terminated Plaintiff as a  
19 direct result of his reporting of unlawful and unsafe conditions in the workplace. Plaintiff, on information  
20 and belief, contends that the Company terminated another Company Employee for making similar reports.

21 40. On September 21, 2020, Plaintiff submitted written notice to the California Labor and  
22 Workforce Development Agency ("LWDA") and the Company informing them of the Company's alleged  
23 violations of the Labor Code under the PAGA, including the facts and theories to support each violation.  
24 A true and correct copy of the September 21, 2020 written notice is attached hereto as **Exhibit 1** and is  
25 incorporated herein by reference.

26 41. To date, the LWDA has not provided notice of whether it intends to investigate the alleged  
27 violations of the Labor Code. Pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue,  
28 the asserted claims in a representative action in his representative capacity on behalf of himself, all other

Company Employees, the general public and the state of California as permitted by Labor Code § 2699.3.

42. Plaintiff further believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations through the discovery process, Plaintiff will seek to amend the operative complaint as necessary.

**V.**

**PAGA CLASS**

43. By and through this representative action, Plaintiff intends to represent the following class of individuals: All current or former non-exempt employees of Defendants in California during the time period commencing on the date that is one (1) year and sixty-five (65) days prior to the filing of this Complaint through and including the last date of trial ("PAGA Period"). To the extent that the California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims asserted against Defendants, the PAGA Period should be adjusted accordingly.

44. A more precise definition of the class may be determined after further investigation and formal discovery. Plaintiff reserves his right to redefine the class and/or create subclasses in accordance with California law.

**VI.**

**PAGA DESIGNATION**

52. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

53. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to § 2699(i).

54. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed

1 notice of his claims with LWDA, the Company was Plaintiff's and all other Company Employees'  
2 employer or person acting on behalf of Company Employees' employer either individually or as an officer,  
3 agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid  
4 or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as  
5 such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to  
6 Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

7 55. Plaintiff is an "aggrieved employee" under the PAGA, because he was employed by the  
8 alleged violator, the Company, and had one or more of the alleged violations committed against him, and  
9 therefore is properly suited to represent the interests of other Company Employees.

10 56. Plaintiff alleges that all other Company Employees are also "aggrieved employees" under  
11 the PAGA, Defendant employed them, and the Company Employees experienced one or more of the  
12 alleged violations outlined herein.

13 57. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies  
14 because he complied with the notice requirements outlined in Labor Code § 2699.3. On September 21,  
15 2020, Plaintiff submitted notice to the LWDA and the Company informing them of the Company's alleged  
16 Labor Code violations pursuant to PAGA. (See Exh. 1.) The LWDA had 65 days to provide notice of  
17 whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of  
18 whether it intends to investigate the alleged violations. Plaintiff thus has the right to pursue, and does  
19 pursue, his claims under PAGA in a representative capacity pursuant to Labor Code § 2699.

20 58. As set forth herein, the Company has committed, and continues to commit, numerous  
21 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his  
22 representative capacity, to recover, on behalf of himself, all other Company Employees, the state of  
23 California, and the general public, civil penalties as well as attorneys' fees and costs from the Company  
24 for the alleged violations, described herein.

25 59. Plaintiff, in his representative capacity on behalf of himself and all other Company  
26 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on  
27 violations of the following Labor Code and/or IWC Wage Order provisions:

28 a. Failure to provide legally compliant meal periods or compensation in lieu thereof

in violation of Labor Code §§ 204, 226.7, 512, 558 and 1198 and the “Meal Periods” section of the IWC Wage Order 16-2001;

b. Failure to provide legally compliant rest periods or compensation in lieu thereof in violation of Labor Code §§ 204, 226.7 and 1198 and the “Rest Period” section of the IWC Wage Order 16-2001;

c. Failure to timely pay minimum, regular, and/or overtime wages in violation of Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and the “Minimum Wages” and “Hours and Days of Work” sections of the IWC Wage Order 16-2001;

d. Failure to timely pay reporting time wages in violation of Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, and 1198 and the “Reporting Time Pay” section of the IWC Wage Order 16-2001;

e. Failure to timely pay all wages due and owing upon separation of employment and/or the necessary waiting time penalties in violation of Labor Code §§ 201-204;

f. Failure to reimburse for necessary business expenses in violation of Labor Code § 2802;

g. Failure to furnish accurate itemized wage statements, including written notice of sick leave, in violation of Labor Code §§ 226, 226.3, and 246 and the “Records” section of the IWC Wage Order 16-2001;

h. Failure to maintain accurate records in violation of Labor Code §§ 226(a), 1174, and 1174.5 and the “Records” section of the IWC Wage Order 16-2001; and

i. Retaliation against employees for making good-faith complaints about working conditions in violation of Labor Code §§ 98.6, 1102.5, and 6310.

60. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 2802, and 6310. Plaintiff and other Company Employees are entitled to, and therefore seek, the civil

penalties described in Labor Code § 2699(f) for the violations of law described herein.

61. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

## VII.

### CAUSES OF ACTION

#### FIRST CAUSE OF ACTION

##### **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**

##### **OR COMPENSATION IN LIEU THEREOF**

**(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

**[Labor Code §§ 204, 226.7, 512, 558 and 1198 and**

**the "Meal Periods" section of IWC Wage Order No. 16-2001]**

62. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

63. Labor Code § 512(a) states:

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

64. The "Meal Periods" section of IWC Wage Order No. 16-2001 provides, in pertinent part,

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

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

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (Emphasis added.)

65. A meal period generally comports with the requirements under California law if the employee has at least 30 minutes uninterrupted, is free to leave the premises, and is relieved of all duty for the entire period. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) Additionally, “an employer may not undermine formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at p. 1040.)

66. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) further provides, [i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

67. Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due and payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

68. Plaintiff alleges that the Company has a policy, practice, procedure and/or guideline of failing to provide Company Employees with the opportunity to take legally compliant meal periods. Plaintiff contends that he and other Company Employees did not receive meal periods that were at least thirty (30) minutes in duration, free from interruption, and/or outside the Company’s control. For example, when working in the day, scheduled from 6:00 a.m. until 2:00 p.m., Plaintiff and other Company

1 Employees typically had their meal periods scheduled from 11:30 a.m. to 12:00 p.m., after the fifth hour  
2 of work, thus consistently resulting in meal periods that occurred after the fifth hour of work. Additionally,  
3 Plaintiff alleges that several days a week he and other Company Employees were not given the opportunity  
4 to take legally compliant meal periods due to the workload. Further, Plaintiff asserts that he and other  
5 Company Employees were often directed to return to work, prior to the end of their meal periods, and/or  
6 were interrupted by their supervising foremen or other management positions to perform work during the  
7 remainder of their meal periods. Moreover, Plaintiff and other Company Employees were not permitted  
8 to leave the premises during meal periods.

9 69. For these reasons, Company Employees, including Plaintiff, have suffered, and will  
10 continue to suffer, the aforementioned violations of law.

11 70. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor  
12 Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100  
13 for any initial violation for each failure to pay each employee and for each subsequent violation, or any  
14 willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount  
15 unlawfully withheld, in addition to any other penalty. Plaintiff and all other Company Employees are  
16 entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

17 71. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided  
18 by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for  
19 the each pay period for which the employee was underpaid in addition to an amount sufficient to recover  
20 the underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid  
21 employee for each pay period for which the employee was underpaid in addition to an amount sufficient  
22 to recover underpaid wages. Plaintiff and all other Company Employees are entitled to and thus seek the  
23 civil penalties outlined in Labor Code § 558.

24 72. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
25 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
26 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
27 §§ 204, 226.7, 512, 558 and 1198. Plaintiff and other Company Employees are entitled to, and therefore  
28 seek, the civil penalties outlined in Labor Code § 2699(f).

73. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

74. Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs, and interest as provided by Labor Code §§ 210, 218.5, 218.6, and 558, as well as under the "common fund" theory, the "substantial benefit" theory.

75. Plaintiff, in his representative capacity, requests further relief as described in the below prayer.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS**

#### **OR COMPENSATION IN LIEU THEREOF**

**(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

**[Labor Code §§ 204, 226.7 and 1198 and the "Rest Periods" section of**

**IWC Wage Order No. 16-2001]**

76. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

77. In pertinent part, Labor Code § 226.7 provides:

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

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

78. The "Rest Periods" section of IWC Order No. 16 -2001, states:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

79. Unless an employer relieves its employees of any and all work-related duties and also relinquishes all control over how its employees spent their time during rest periods, the employer has not authorized and permitted lawful off-duty rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

80. Plaintiff contends that the Company has a policy, practice, procedure and/or guideline of failing to authorize and permit Company Employees to take rest periods for every for every four (4) hours worked or major fraction thereof. For instance, Plaintiff and other Company Employees were only permitted to take one rest period per workday when working a daytime shift, irrespective of the total number of hours that Claimant and other Company Employees actually worked. Plaintiff and other Company Employees regularly worked at least eight-hour shifts, therefore entitling them to at least two ten (10) minute rest periods per workday. Additionally, the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not permitting Company Employees to leave the premises during rest periods and not relinquishing control over how Company Employees spend their break time. Furthermore, the Company had, and continues to have, a policy, practice, procedure, and/or guideline of not authorizing and permitting Company Employees to take a single rest period when working night shifts, even though they regularly worked more than four hours for such shifts.

81. For these reasons, Company Employees, including Plaintiff, have suffered, and will continue to suffer, the aforementioned violations of law.

82. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100

1 for any initial violation for each failure to pay each employee and for each subsequent violation, or any  
2 willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount  
3 unlawfully withheld, in addition to any other penalty. Plaintiff and all other Company Employees are  
4 entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

5 83. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
6 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
7 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
8 §§ 204, 226.7 and 1198. Plaintiff and other Company Employees are entitled to, and therefore seek, the  
9 civil penalties outlined in Labor Code § 2699(f).

10 84. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought  
11 pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff,  
12 in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and  
13 therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

14 85. Plaintiff, in his representative capacity on behalf of himself and all other Company  
15 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest as  
16 provided by Labor Code §§ 210, 218.5, and 218.6, as well as under the "common fund" theory, the  
17 "substantial benefit" theory.

18 86. Plaintiff, in his representative capacity, requests further relief as described in the below  
19 prayer.

### 20 **THIRD CAUSE OF ACTION**

#### 21 **FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES**

22 **(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

23 **[Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and**  
24 **the "Minimum Wages" and "Hours and Days of Work" sections of the IWC Wage Order 16-2001]**

25 87. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
26 paragraphs of this Complaint.

27 88. Labor Code section 204 establishes an employee's fundamental right in the state of  
28 California to be paid wages in a timely manner for their work. Labor Code section 204(a) states in pertinent

1 part, “[a]ll wages...earned by any person in any employment are due and payable twice during each  
2 calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore,  
3 Labor Code section 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall  
4 be paid no later than the payday for the next regular payroll period.”

5 89. Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission  
6 or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of  
7 a lower wage than the minimum so fixed is unlawful.”

8 90. Labor Code § 1197.1 provides,

9 [a]ny employer or other person acting either individually or as an officer,  
10 agent, or employee of another person, who pays or causes to be paid to any  
11 employee a wage less than the minimum fixed by an applicable state or local  
12 law or by an order of the commission shall be subject to a civil penalty,  
restitution of wages, liquidated damages payable to the employee, and any  
applicable penalties imposed pursuant to Section 203....

13 91. Labor Code § 1198 states,

14 [t]he maximum hours of work and the standard conditions of labor fixed by  
15 the commission shall be the maximum hours of work and the standard  
16 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.

17 92. The “Minimum Wages” section of IWC Wage Order No. 16-2001 states that “[e]very  
18 employer shall pay to each employee, on the established payday for the period involved, not less than the  
19 applicable minimum wage for all hours worked in the payroll period, whether the remuneration is  
20 measured by time, piece, commission, or otherwise.”

21 93. Codifying the right to overtime compensation, Labor Code section 510 provides,

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

28 94. An employee may not waive his or her right to overtime compensation and any agreement

1 by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*Early*  
2 *v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

3 95. Labor Code section 1194(a) mandates,

4 “...any employee receiving less than the legal minimum wage or the legal  
5 overtime compensation applicable to the employee is entitled to recover in  
6 a civil action the unpaid balance of the full amount of this minimum wage  
or overtime compensation, including interest thereon, reasonable  
attorney’s fees, and costs of suit.”

7 96. Premium wages for non-compliant meal and/or rest periods constitute wages under Labor  
8 Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

9 97. The Company has a policy, practice, procedure, and/or guideline of failing to timely pay  
10 all Company Employees, including Plaintiff, minimum, regular, and/or overtime wages for all time  
11 actually worked. For example, the Company regularly permits foremen and other supervisory positions to  
12 clock in and out for Company Employees, as well as adjust time records without the Company Employees’  
13 consent. Plaintiff contends that he and other Company employees were not timely or properly paid all  
14 minimum, regular, and/or overtime hours on the regular pay days designated by the Company because  
15 foremen and other supervisory positions often altered their time records by reducing the time actually  
16 worked by the Company Employees. Foreman and other supervisory positions also recorded legally  
17 compliant meal periods irrespective of whether a legally compliant meal period was actually taken;  
18 thereby depriving Company Employees of premium wages for non-compliant meal periods.

19 98. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor  
20 Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100  
21 for any initial violation for each failure to pay each employee and for each subsequent violation, or any  
22 willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount  
23 unlawfully withheld, in addition to any other penalty. Plaintiff and all other Company Employees are  
24 entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

25 99. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided  
26 by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for  
27 the each pay period for which the employee was underpaid in addition to an amount sufficient to recover  
28 the underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid

1 employee for each pay period for which the employee was underpaid in addition to an amount sufficient  
2 to recover underpaid wages. Plaintiff and all other Company Employees are entitled to and thus seek the  
3 civil penalties outlined in Labor Code § 558.

4 100. Labor Code § 1197.1 imposes upon Defendants, for each initial violation of wage and hour  
5 laws, a penalty of \$100.00 for each underpaid employee for each pay period for which the employee is  
6 underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages and  
7 liquidated damages pursuant to Labor Code § 1194.2, which states: “[i]n any action under Section 98,  
8 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage  
9 fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated  
10 damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Plaintiff and all other  
11 Company Employees are entitled to and therefore seek the civil penalties outlined in Labor Code §§  
12 1197.1 and 1194.2.

13 101. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
14 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
15 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
16 §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199. Plaintiff and other Company Employees  
17 are entitled to, and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

18 102. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought  
19 pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiff,  
20 in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and  
21 therefore seeks, attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

22 103. Plaintiff, in his representative capacity on behalf of himself and all other Company  
23 Employees, is entitled to and therefore seeks recovery of reasonable attorneys’ fees, costs and interest as  
24 provided by Labor Code §§ 210, 218.5, 218.6, 558, 1194, 1194.2 and 1197.1, as well as under the  
25 “common fund” theory, the “substantial benefit” theory.

26 104. Plaintiff, in his representative capacity, requests further relief as described in the below  
27 prayer.

28 ///

**FOURTH CAUSE OF ACTION**

**FAILURE TO TIMELY PAY REPORTING TIME WAGES**

**(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

**[Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198, and**

**the “Reporting Time Pay” section of the IWC Wage Order 16-2001]**

105. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

106. The “Reporting Time Pay” section of the IWC Wage Order 16-2001 provides  
“[e]ach workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day’s, the employer shall pay him/her for half the usual or scheduled day’s work ,but in no event for less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay, which shall not be less than minimum wage.”

107. Reporting time pay constitutes wages. (*Murphy, supra*, 40 Cal.4th 1094, 1111-1114.)

108. Labor Code § 1198 states,

[t]he 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.

109. Labor Code § 1194(a) states,

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

110. Plaintiff alleges that the Company had and continues to have a policy, practice, procedure, and/or guideline of failing to timely pay reporting time wages to Company Employees. For instance, the Company often required Company Employees, including Plaintiff, to arrive at their worksite for their scheduled shift only to be sent home. Other times, the Company required Company Employees to telephone the Company prior to the start of a shift to see if they had to appear for their shift. However, despite requiring Company Employees to report for work, the Company did not compensate Plaintiff and,

on information and belief, other Company Employees reporting time pay.

111. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Company Employees are entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

112. Labor Code § 1197.1 imposes upon Defendants, for each initial violation of wage and hour laws, a penalty of \$100.00 for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages and liquidated damages pursuant to Labor Code § 1194.2, which states: “[i]n any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Plaintiff and all other Company Employees are entitled to and therefore seek the civil penalties outlined in Labor Code §§ 1197.1 and 1194.2.

113. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 and 1198. Plaintiff and other Company Employees are entitled to, and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

114. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and therefore seeks, attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

115. Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to and therefore seeks recovery of reasonable attorneys’ fees, costs and interest as provided by Labor Code §§ 210, 218.5, 218.6, 558, 1194, 1194.2 and 1197.1, as well as under the

1 “common fund” theory, the “substantial benefit” theory.

2 116. Plaintiff, in his representative capacity, requests further relief as described in the below  
3 prayer.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON**  
6 **SEPARATION OF EMPLOYMENT**

7 **(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

8 **[Labor Code §§ 201-204]**

9 117. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
10 paragraphs of this Complaint.

11 118. Labor Code section 200(a) defines “wages” to include “all amounts for labor performed by  
12 employees...whether the amount is fixed or ascertained by the standard of time...commission basis, or  
13 other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor, work,  
14 or service whether rendered or performed under contract, subcontract, partnership...or other agreement if  
15 the labor...is performed personally by the person demanding payment.”

16 119. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an employee,  
17 the wages earned and unpaid at the time of discharge are due and payable immediately.”

18 120. Labor Code section 202 further mandates,

19 [i]f an employee not having a written contract for a definite period quits his  
20 or her employment, his or her wages shall become due and payable not later  
21 than 72 hours thereafter, unless the employee has given 72 hours previous  
22 notice of his or her intention to quit, in which case the employee is entitled  
23 to his or her wages at the time of quitting.

24 121. Labor Code section 203(a) provides, in pertinent part,

25 [i]f an employer willfully fails to pay, without abatement or reduction, in  
26 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any  
27 wages of an employee who is discharged or who quits, the wages of the  
28 employee shall continue as a penalty from the due date thereof at the same  
rate until paid or until an action therefore is commenced; but the wages shall  
not continue for more than 30 days.

122. Premium wages and reporting time pay constitute wages under Labor Code § 204.  
(*Murphy, supra*, 40 Cal.4th at 1103-1114.)

123. Plaintiff asserts that the Company has a policy, practice, procedure and/or guideline of failing to timely pay former Company Employees all wages due and owing upon separation of employment and/or the required waiting time penalties. For instance, the Company has failed to timely pay all minimum, regular and/or overtimes wages for all time actually worked, all premium wages for non-compliant meal and/or meal periods, and reporting time pay within the required time upon separation of their employment. The Company has also failed to pay the required waiting time penalties for failing to timely pay all wages due and owing upon separation of employment.

124. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Company Employees are entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

125. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201-204. Plaintiff and other Company Employees are entitled to, and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

126. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

127. Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest as provided by Labor Code §§ 210, 218.5, and 218.6, as well as under the "common fund" theory, the "substantial benefit" theory.

128. Plaintiff, in his representative capacity, requests further relief as described in the below prayer.

**SIXTH CAUSE OF ACTION**

**FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

**(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

**[Labor Code § 2802]**

129. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

130. Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

131. The Company has a policy, practice, procedure and/or guideline of failing to reimburse Company Employees for necessary work expenses. For example, at the end of each shift Plaintiff and other Company Employees usually receive a phone call and/or text message to their personal cell phones regarding the whereabouts of their next shift, and were required, and are still required, to use their personal cell phones after work hours to receive phone calls and/or text messages about where they would be scheduled to work the following day. Additionally, Plaintiff and other Company Employees were required, and are still required, to communicate throughout the workday with co-workers and supervisors on their personal cell phones. Despite the necessary use of personal cell phones for work purposes, the Company failed to, and continues to fail, to reimburse Company Employees for the use of their personal cell phones.

132. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code § 2802. Plaintiff and other Company Employees are entitled to, and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

133. Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled

1 to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2802(c).

2 134. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought  
3 pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff,  
4 in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and  
5 therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

6 135. Plaintiff, in his representative capacity on behalf of himself and all other Company  
7 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest as  
8 provided by Labor Code §§ 218.5, 218.6 and 2802, as well as under the "common fund" theory, the  
9 "substantial benefit" theory.

10 136. Plaintiff, in his representative capacity, requests further relief as described in the below  
11 prayer.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

14 **AND PROVIDE WRITTEN NOTICE OF SICK LEAVE**

15 **(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

16 **[Labor Code §§ 226, 226.3, and 246 and the "Records" section of the IWC Wage Order 16-2001]**

17 137. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
18 paragraphs of this Complaint.

19 138. Labor Code § 226(a) states in pertinent part:

20 Every employer shall, semimonthly or at the time of each payment of  
21 wages, furnish each of his or her employees, either as detachable part of the  
22 check, draft, or voucher paying the employee's wages, or separately when  
23 wages are paid by personal check or cash, an accurate itemized statement in  
24 writing showing (1) gross wages earned, (2) total hours worked by the  
25 employee... (5) net wages earned, (6) the inclusive dates of the period for  
26 which the employee is paid... (7) the name of the employee and only the  
27 last four digits of his or her social security number or an employee  
28 identification number...(8) the name and address of the legal entity that is  
the employer, and (9) all applicable hourly rates in effect during each period  
and the corresponding number of hours worked at each hourly rate by the  
employee...

139. Labor Code § 246 provides that an employer must provide an employee with written notice  
of the amount of sick leave available on either the employee's itemized wage statement or in a separate

1 writing provided on the designated pay date with the employee's payment of wages.

2 140. Plaintiff alleges that the Company has, and continues to have, a policy, practice, procedure  
3 and/or guideline of failing to furnish Company Employees with accurate itemized wage statements, as  
4 well as written notice of sick leave. For instance, the wage statements furnished to Company Employees  
5 did not, among other things, include the accurate total regular and/or overtime hours actually worked, the  
6 accurate hourly rates, reporting time pay, premium wages, the corresponding number of hours worked at  
7 each hourly rate, or the correct amount of gross and/or net wages earned. The wage statements furnished  
8 also did not include the correct name of the employer. Additionally, Plaintiff and other Company  
9 Employees were not provided with written notice of available sick leave.

10 141. Labor Code § 226(e)(1) imposes a penalty of the greater of all actual damages or \$50 for  
11 the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent  
12 pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs  
13 and reasonable attorney's fees. Labor Code § 226.3 imposes an additional civil penalty on the employer  
14 of \$250 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee  
15 for each violation in a subsequent citation.

16 142. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
17 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
18 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
19 §§ 226, 226.3, and 246. Plaintiff and other Company Employees are entitled to, and therefore seek, the  
20 civil penalties outlined in Labor Code § 2699(f).

21 143. Labor Code § 226(h) entitles an employee to an award of costs and reasonable attorneys'  
22 fees. Plaintiff, in his representative capacity, seeks costs and reasonable attorneys' fees in accordance with  
23 Labor Code § 226(h).

24 144. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought  
25 pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. Plaintiff, in his  
26 representative capacity on behalf of himself and all other Company Employees, is entitled to, and therefore  
27 seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

28 145. Plaintiff, in his representative capacity on behalf of himself and all other Company

Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest as provided by Labor Code §§ 218.5, 218.6 226(e), 226(h), as well as under the "common fund" theory, the "substantial benefit" theory.

146. Plaintiff, in his representative capacity, requests further relief as described in the below prayer.

### **EIGHTH CAUSE OF ACTION**

#### **FAILURE TO MAINTAIN ACCURATE RECORDS**

**(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

**[Labor Code §§ 226(a), 1174, and 1174.5 and the "Records" section of  
the IWC Wage Order 16-2001]**

147. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

148. Labor Code § 226(a) requires an employer to keep a copy of each wage statement and record of all deductions on file for at least three years.

149. Section 1174(d) of the Labor Code provides:

[e]very person employing labor in this state shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

150. The "Records" section of the IWC Wage Order 16-2001 states,

[e]very employer who what control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following: (1) the employee's full name, home address, occupation, and social security number...Time records showing when the employee begins and ends each work period. Meal Periods, split shift intervals, and total daily hours worked shall also be recorded...(2) Total wages paid to each payroll period...(3) Total hours worked during the payroll period and applicable rates of pay...

151. Plaintiff alleges that the Company violated these provisions by failing to accurately record

1 Plaintiff's and other Company Employees' hours actually worked, including, but not limited to, the  
2 Company's failure to record the proper beginning and end of each work period, the meal periods, the total  
3 hours worked during the pay period, the applicable rates of pay, and the actual wages earned and the wages  
4 paid, among other things.

5 152. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain  
6 accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period,  
7 per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor  
8 Code § 1174(d). Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code  
9 § 1174.5.

10 153. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
11 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
12 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
13 §§ 226(a), 1174 and 1174.5. Plaintiff and other Company Employees are entitled to, and therefore seek,  
14 the civil penalties outlined in Labor Code § 2699(f).

15 154. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought  
16 pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff,  
17 in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and  
18 therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

19 155. Plaintiff, in his representative capacity on behalf of himself and all other Company  
20 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest as  
21 provided by Labor Code §§ 218.5, 218.6, 226(h), as well as under the "common fund" theory, the  
22 "substantial benefit" theory.

23 156. Plaintiff, in his representative capacity, requests further relief as described in the below  
24 prayer.

25 ///

26 ///

27 ///

28 ///

**NINTH CAUSE OF ACTION**

**RETALIATION AGAINST EMPLOYEES WHO MAKE GOOD-FAITH COMPLAINTS  
ABOUT UNSAFE AND UNLAWFUL WORKING CONDITIONS**

**(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)**

**[Labor Code §§ 98.6, 1102.5 and 6310]**

157. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

158. Labor Code § 98.6(a) mandates,

[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

159. Labor Code § 1102.5(b) states,

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

160. Labor Code § 6310(a) provides, in pertinent part,

[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to

employee safety or health, his or her employer, or his or her representative.  
(2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her...

161. Labor Code § 6310(b) further states,

[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

162. Plaintiff alleges that the Company has, and continues to have, a policy, practice, procedure, and/or culture of retaliating against employees who make a good faith complaint about unsafe working conditions, non-compliant meal and/or rest periods and adjustments of time records. For instance, Plaintiff was terminated from his employment shortly after he verbally reported to his manager, Mitch Wahl, and human resources about physical and verbal harassment by, including altercations initiated by, one of his foremen, Ignacio Villagomez, as well as reported non-compliant meal and rest periods and unauthorized time record adjustments. Further, Plaintiff alleges that other former Company Employees were also terminated shortly after making similar complaints to management and/or the human resources department.

163. Labor Code § 98.6(a)(3) provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.” Plaintiff, in his representative capacity, seeks the civil penalty outlined in Labor Code § 98.6(a)(3).

164. Labor Code § 1102.5 provides “[i]n addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.” Plaintiff, in his representative capacity, seeks the civil penalty

outlined in Labor Code § 1102.5.

165. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 1102.5 and 6310. Plaintiff and other Company Employees are entitled to, and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

166. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

167. Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest as provided by Labor Code §§ 218.5 and 218.6, as well as under the "common fund" theory, the "substantial benefit" theory.

168. Plaintiff, in his representative capacity, requests further relief as described in the below prayer.

#### **PRAYER FOR RELIEF**

Plaintiff, in his representative capacity on behalf of himself and all other Company Employees, prays for judgment against Defendants and in favor of a representative action, as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 98.6(a)(3), 210, 226.3, 558, 1102.5, 1174.5, 1197.1 and 2698 *et seq.*, and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For any pre- or post- judgment interest as provided under California law;
- d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by

law, including Labor Code §§ 210, 218.5, 218.6, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, 2802, and 2699(g)(1), the “common fund” theory, the “substantial benefit” theory, and/or other applicable law;

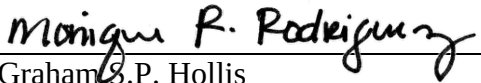
e. For appropriate equitable relief pursuant to California law; and

f. For any and all other relief as this Court deems proper and just.

Dated: December 9, 2020

GRAHAMHOLLIS APC

By:



Graham S.P. Hollis

Vilmarie Cordero

Monique R. Rodriguez

*Attorneys for Plaintiff Jose Contreras*

# **EXHIBIT 1**

September 21, 2020

**Attorneys at Law**

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**VIA ONLINE ELECTRONIC FILING**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**CERTIFIED MAIL (RETURN RECEIPT)**

Commercial Concrete Constructors, Inc.  
1731 South Grove Ave.  
Ontario, CA 91761

Commercial Concrete Constructors, Inc.  
c/o Barbara Ellen Paluzzi, Agent for Service of Process  
1731 South Grove Ave.  
Ontario, CA 91761

**Re: Jose Contreras' Wage and Hour Claims Against Commercial Concrete Constructors, Inc.**

Dear Labor and Workforce Development Agency and Commercial Concrete Constructors, Inc.:

Please be advised that Jose Contreras ("Claimant") has retained our firm, Graham**Hollis**, APC, to represent him for claims against his employer Commercial Concrete Constructors, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against him and all other current or former non-exempt employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current or former non-exempt employees of the Company who worked in California during the relevant time period (referred to herein as "Company Employees"). All Company Employees, including Claimant, are believed to

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

have suffered at least one of the wage and hour violations described herein during the relevant time period. Claimant contends that he and all other Company Employees are “aggrieved employees” as defined by the PAGA.

### **FACTUAL BACKGROUND**

Commercial Concrete Constructors, Inc. is a California corporation. According to the California Secretary of State website, prior to April 2019, the Company was known as Fullmer Concrete Construction. The Company is in the business of concrete construction and provides services including, but not limited to, concrete repair, tilt up walls, foundations, slabs, and commercial construction. The Company has its headquarters in Ontario, California.

Claimant was hired by the Company in July 2019 as a general laborer. Claimant was terminated from his employment with the Company in January 2020. As a general laborer, Claimant’s job duties included, but were not limited to, assisting the foremen, regulating concrete disbursement, and was expected to always be available for tasks from any supervisors. Claimant typically worked Monday through Friday from 6:00 a.m. until 2:00 p.m. or 11:00 p.m. to 8:00 a.m. each day. Claimant earned \$20.00 per hour and was paid every Friday.

Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Company Employees in California who regularly worked at least 8 hours per day and were paid every Friday. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant were also applicable to all other Company Employees.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Company Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order (i.e. IWC Wage Order 16-2001). Specifically, the Company failed, and continues to fail, to provide Claimant and other Company Employees with legally compliant meal and/or rest periods and/or pay them meal and/or rest period premiums for non-compliant meal and/or rest periods; failed, and continues to fail, to timely pay Company Employees, including Claimant, all minimum, regular, and/or overtime wages for all time actually worked; failed, and continues to fail, to pay for reporting time when Company Employees, such as Claimant, were required to report to work, showed up for work, and were not put to work or furnished with less than their usual days’ work; failed, and continues to fail, to reimburse Company Employees for all business expenses; failed, and continues to fail, to maintain accurate records and furnish accurate itemized wage statements; failed, and continues to fail, to provide accurate written notice of sick leave; failed, and continues fail, to timely pay all wages due and owing upon separation of employment; and retaliates against Company Employees who complain about unlawful and/or unsafe working conditions.

Claimant and other Company Employees were not given the opportunity to take legally compliant meal periods. For instance, the Company had, and continues to have, a policy, practice, procedure and/or guideline of not requiring Company Employees to clock in and out for meal periods. Instead, the Company has a policy, practice, procedure and/or guideline of automatically deducting thirty (30) minutes for a meal period without regard to whether Claimant and other Company Employees actually took legally compliant meal periods. Alternatively, the foremen were instructed by the Company, and did

in fact, clock Company Employees in and out for meal periods irrespective of whether the Company Employees, such as Claimant, were actually provided with a legally compliant meal period.

Additionally, Claimant also contends that he and other Company Employees did not receive meal periods that were at least thirty (30) minutes in duration, free from interruption, and/or the Company's control. For instance, when working in the day Claimant and other Company Employees typical had their meal periods scheduled from 11:30 am to 12:00 pm, after the fifth hour of work, thus consistently resulting in meal periods that occurred after the fifth hour of work. Claimant also alleges that several days a week he and other Company Employees were not given the opportunity to take legally compliant meal periods due to the workload. Claimant further asserts that he and other Company Employees were often directed to return to work prior to the end of their meal periods and/or interrupted by their foreman or other management positions to performed work during their meal periods. Company Employees, including Claimant, were not permitted to leave the premises during meal periods.

Moreover, the Company has a policy, practice, procedure, and/or guideline of requiring Company Employees to sign a document entitled "ON-Duty Meal Period Agreement," wherein the Company Employees allegedly agreed to take an on-duty meal period because the nature of their work supposedly prevents them from taking legally compliant meal periods. However, Claimant contends that the agreement is unlawful as it does not meet the requirements provided under California law including, but not limited to, informing the Company Employees that they can revoke the agreement at any time. Additionally, Claimant contends that the Company's use and implementation of on-duty meal periods is unlawful as the nature of the work performed by Company Employees is not one that prevents the Company Employees from being relieved of all duty as there are other reasonable alternatives that the Company can take to ensure that Company Employees are relieved of all duties, including scheduling more laborers to work on a given shift and scheduling meal periods, for example.

Claimant and other Company Employees were not authorized and permitted to take legally compliant rest periods. For instance, the Company had, and continues to have, a policy, practice, procedure and/or guideline of only allowing Company Employees, including Claimant, to take one rest period per workday when working a day shift irrespective of the total number of hours that Claimant and Company Employees worked. This is true despite the fact that Claimant and, on information and belief, other Company Employees regularly worked at least eight-hour shifts, therefore entitling them to at least two ten-minute rest periods per workday. Additionally, the Company had, and continues to have, a policy, practice, procedure and/or guideline of not permitting Company Employees to leave the premises during rest periods and not relinquishing control over how Company Employees spend their break time. Furthermore, the Company had, and continues to have, a policy, practice, procedure and/or guideline of not authorizing and permitting Company Employees, such as Claimant, to take a single rest period when working a night shift, even though they regularly worked more than four hours in a workday.

Although Claimant and other Company Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Company Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the IWC Wage Order 16-2001. Therefore, the Company owes Claimant and, on information and belief, other Company Employees a meal and/or rest period premium for each workday that Claimant and other Company Employees were not provided with a legally compliant meal and/or rest period.

Claimant and other Company Employees were not timely paid all minimum, regular, and/or overtime wages for all time worked. The Company has, and continues to have, a policy, practice, procedure, and/or guideline of directing and/or otherwise regularly permitting foremen and other management positions to clock in and out for Company Employees, as well as adjusting time records without the Company Employees' consent. As a result, Company Employees, including Claimant, were not properly paid all minimum, regular and/or overtime wages for all hours actually worked because foremen and other management positions often reduced the time worked by Company Employees, as well as recorded legally compliant meal periods regardless of whether a legally compliant meal period was actually taken. Claimant and other Company Employees should have been afforded minimum, regular, and/or overtime wages for the time that Company Employees, including Claimant, were actually engaged in work as well as the time spent engaged in work during their alleged meal and/or rest periods. Claimant and other Company Employees also should have been paid premium wages for non-compliant meal and/or rest periods.

Claimant alleges that the Company has, and continues to have, a policy, practice, procedure and/or guideline of requiring Company Employees to respond to work communications after their scheduled work hours without compensation for such time. Company Employees, including Claimant, should have been timely compensated minimum, regular and/or overtime wages for such time.

The Company also has, and continues to have, a policy, practice, procedure, and/or guideline of requiring Company Employees to show up for work but not compensating Company Employees the proper reporting pay when they were not put to work or were otherwise furnished with less than their usual days' work. As such, the Company failed to meet its obligations to timely pay Claimant and other Company Employees all reporting time wages.

Claimant, and on information and belief other Company Employees, have yet to be paid their wages for all time worked, premium wages for all non-compliant meal and/or rest periods, and/or reporting time wages.

Claimant asserts that the Company failed, and continues to fail, to reimburse him and other Company Employees for all necessary expenses that were incurred in the discharge of their job duties. For example, at the end of each shift Claimant and other Company Employees usually receive a phone call and/or text message to their personal cell phones regarding information regarding the whereabouts of their next shift. Claimant and, on information and belief, other Company Employees were required, and are still required, to use their personal cell phones after work hours to receive phone calls and/or text message about where they would be scheduled to work the following day. Furthermore, Claimant and other Company Employees were required, and are still required, to communicate throughout the workday with co-workers and supervisors on their personal cell phones. Claimant and other Company Employees did not receive reimbursement for these business expenses, as required by California law.

Claimant alleges that the Company fails to maintain accurate records reflecting, for example, all of Claimant's and other Company Employees' actual hours worked, the meal periods taken, and wages earned and paid, in violation of California law. For instance, the Company had, and continues to have, a policy, practice, procedure and/or guideline of automatically deducting 30 minutes for a meal period without regard to whether the employees actually received a meal period or was relieved of all duties during that period and adjusting time records to reduce the total number of hours worked. The Company

had, and continues to have, a policy, practice, procedure and/or guideline of permitting foremen to clock in and out for Company Employees, which has resulted in Company Employees having their time records modified.

In addition, the wage statements furnished by the Company to Company Employees did not, and still do not include, among other things, the correct amount of gross and net wages actually earned, total hours actually worked by the employee, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee as required under Labor Code § 226. The wage statements also do not include the correct number of regular and overtime hours and respective hourly rates for Claimant and other Company Employees when the Company failed to pay the legal minimum, standard and/or overtime wages to Company Employees as required by the applicable Wage Order. Moreover, the wage statements do not include the correct name of the employer, nor the employer's address, particularly as the wage statements continue to list Fullmer Concrete Construction as the employer. Further, the wage statements do not reflect the correct number of sick hours accrued and used in violation of Labor Code § 246.

Claimant contends that the Company has, and continues to have, a policy, practice, procedure, and/or culture of retaliating against employees who make a good faith complaint about unsafe working conditions, non-compliant meal and/or rest periods and adjustments of time records. For instance, Claimant was terminated from his employment a couple of weeks after he verbally complained to his manager, Mitch Wahl, and human resources about physical and verbal harassment by, including physical altercations initiated by, one of his foremen, Ignacio Villagomez (aka "Nacho"), as well as non-compliant meal and rest breaks and unauthorized time record adjustments. Claimant alleges that other former Company Employees were also terminated shortly after making similar complaints. The Company has therefore violated Labor Code §§ 98.6, 1102.5 and 6310.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Company Employees certain rights afforded them under the Labor Code and the IWC Wage Order 16-2001. Claimant makes these claims against the Company on behalf of himself and all other Company Employees.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, the CEO/President Loyd McGhee, the CFO/Secretary Barbara Paluzzi, the Manager Mitch Wahl, and/or the foreman Ignacio Villagomez, are liable for the PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations alleged herein. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party *other than the employer* 'violates, or causes of be violated' the overtime laws (§ 558(a)), or 'pays or causes to be paid to an employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties *regardless of the identity or business structure of the employer*"); see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same).

The facts and/or claims contained herein are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of himself and other current or former Company Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who

have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR  
AUTHORIZE AND PERMIT REST PERIODS OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 210, 226.7, 512, 558, 1198, and the “Meal Periods” and  
“Rest Periods” sections of the IWC Order 16-2001)

Labor Code § 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code § 512(a) states,

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

The “Meal Periods” section of the IWC Wage Order 16-2001 states,

[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The

written agreement shall state that the employee may, in writing, revoke the agreement at any time.

The IWC Wage Order 16-2001 further states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Rest Periods” section of the IWC Wage Order 16-2001 provides that,

[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” Rest Periods section of the IWC Wage Order 16-2001.

Labor Code § 1198 states,

[t]he 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.

Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with Labor Code § 204. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.

Labor Code § 210 mandates that, “...every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to provide Claimant and other Company Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or did not authorize and permit Claimant and, on information and belief, other Company Employees to take legally compliant rest periods, as required by California law. Claimant contends that the Company has, and continues to have, a policy, practice, procedure and/or guideline of unlawfully altering employee time records to reflect compliant meal periods. Consequently, Claimant and other Company Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided and/or one-hour of premium wages for each day a compliant rest period was not authorized and/or permitted.

Moreover, the Company had, and continues to have, a policy, practice, procedure, and/or guideline of requiring Company Employees to sign a document entitled “ON-Duty Meal Period Agreement,” wherein the Company Employees supposedly agreed to take an on-duty meal period because the nature of their work allegedly prevents them from taking legally compliant meal periods. Claimant contends that the Company’s use and implementation of on-duty meal periods is unlawful as the nature of the work performed by Company Employees is not one in which that prevents the Company Employees from being relieved of all duty.

Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Company Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES**

(Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the  
“Minimum Wages” and “Hours and Days of Work” sections of the IWC Order 16-2001)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

Labor Code § 1197.1 provides that,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203....

Labor Code § 1198 states,

[t]he 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.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code §1198.

Labor Code § 510 states,

[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less

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

The “Hours and Days of Work” and “Minimum Wages” sections of the IWC Wage Order 16-2001 mandate the same requirements as Labor Code § 510.

Labor Code § 204 (a) states in pertinent part,

[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

Furthermore, Labor Code § 204 (b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Premium wages for non-compliant meal and/or rest periods constitute wages under Labor Code § 204. *Murphy, supra*, 40 Cal.4th at 1103-1114.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

The “Minimum Wages” section of the IWC Wage Order 16-2001 also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1194(a) states,

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

Labor Code § 1194.2 provides for liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under.

As set forth above, as the Company required Claimant and other Company Employees to work off-the-clock during meal periods without compensation, as well as to respond to work related communications after work hours. The Company had, and continues to have, a policy, practice,

procedure, and/or guideline of directing and/or otherwise regularly permitting foremen and other management positions to clock in and out for Company Employees, as well as modify time records. As a result, Company Employees, including Claimant, were not timely paid all minimum, regular and/or overtime wages for all hours actually worked and premium wages for non-complaint meal and/or rest periods. The Company therefore failed to meet its obligations to timely pay Claimant and other Company Employees. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Company Employees to the extent allowed by law.

**FAILURE TO PAY REPORTING TIME WAGES**

(Labor Code §§ 204, 1194, 1197.1, 1198, and the "Reporting Time Pay" section of the IWC Order 16-2001)

The "Reporting Time Pay" section of the IWC Wage Order 16-2001 provides that an employer is to pay an employee for his or her scheduled day's work at not less than the minimum wage when an employee is required to report to work, and does report, but is not put to work or is furnished less than half of his or her usual or scheduled day's work. Reporting time wages are wages under Labor Code § 204. *Murphy, supra*, 40 Cal.4th at 1103-1114.

Labor Code § 1198 states that

[t]he 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.

Labor Code § 1194(a) states,

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

The Labor Code makes it unlawful for any employer "or other person acting either individually or an officer, agent or employee of another person" to require or cause any employee to work for longer hours than those fixed by the Industrial Welfare Commission, to pay or cause an employee to be paid less than the minimum fixed by an order of the commission or violates, refuses, and/or neglects to comply with any provisions of the Wages, Hours and Working Conditions of the Labor Code or any order or ruling of the commission. See Labor Code §§ 558, 11971, 1199.

As set forth above, the Company failed, and continues to fail, to timely pay Claimant and all other Company Employees the required amount of reporting time wages when the Company required Company Employees to show up for work but did not put them to work or otherwise furnish them with less than their usual day's work as required by California law. Claimant will pursue all available remedies for the

Company's violations on behalf of himself and all other Company Employees to the extent permitted by law.

**FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**  
(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code § 2802(b) states,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and other Company Employees utilize their personal cell phones in the discharge of their duties without providing reimbursement. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Company Employees to the extent allowed by law.

**FAILURE TO MAINTAIN ACCURATE RECORDS**  
(Labor Code §§ 226(a), 226(e)(1), 1174, 1174.5, and the "Records" section of the IWC Order 16-2001)

Labor Code § 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments." See also Labor Code § 226(a).

The "Records" section of the IWC Wage Order 16-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period,

per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated these requirements by failing to accurately record Claimant's and other Company Employees' hours actually worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and the wages paid, among other things. The Company has violated California Law and Claimant will pursue all available remedies for the Company's violations on behalf of himself and other Company Employees to the extent allowed by law.

**FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**  
(Labor Code §§ 226, 226.3, 246 and the "Records" section of the IWC Order 16-2001)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing:

(1) gross wages earned, (2) total hours worked by the employee, ..., (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 246 provides that an employer must provide an employee with written notice of the amount of sick leave available on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney's fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company failed, and continues to fail, to furnish Claimant and other Company Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements furnished did not, among other things, include the accurate total regular and/or overtime hours actually worked, the accurate hourly rates and corresponding number of hours worked at each hourly rate, or the correct amount of gross and/or net wages earned. The wage statements furnished also did not include the correct name of the employer. Claimant and other Company Employees were also not provided with written notice of available sick leave. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Company Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203, and 210)

Labor Code § 201 states, in pertinent part, [i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states, in pertinent part,

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Premium wages and reporting time pay constitute wages under Labor Code § 204. *Murphy, supra*, 40 Cal.4th at 1103-1114.

Labor Code § 203(a) states, in pertinent part,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 mandates that, “...every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated the Labor Code by not timely paying Claimant and other Company Employees all minimum, regular and/or overtime wages, all premium wages, and reporting time pay within the required time upon separation of their employment. The Company also failed to pay the required waiting time penalties for failing to timely pay all wages due and owing upon separation of employment. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all former Company Employees to the extent allowed by law.

### **RETALIATION**

(Labor Code §§ 98.6, 1102.5, and 6310)

Labor Code § 98.6(a) mandates,

[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

Labor Code § 98.6(a)(3) further provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 1102.5(b) states,

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

In addition to other penalties, “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation” of Labor Code § 1102.5(b).

Labor Code § 6310(a) provides, in pertinent part,

[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her...

Labor Code § 6310(b) further states,

[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

As set forth above, the Company engaged in retaliation against Claimant and wrongfully took adverse employment action against him when they terminated his employment after making a good-faith complaint to human resources about unsafe and unlawful work conditions in violation of Labor Code §§ 98.6, 1102.5 and 6310.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND THE  
IWC WAGE ORDER 16-2001**

(Labor Code §§ 98.6(a)(3), 210, 226.3, 558, 558.1, 1102.5(e), 1174.5, 1197.1, and 2699(f))

Labor Code § 98.6(a)(3) further provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 210 provides that any person who fails to pay wages as provided in §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code pt.2, ch.1 (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows:

[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

Labor Code § 558.1(a) states that,

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

This includes the owners, officers, directors, or managing agents of the employer.

Labor Code § 1102.5(b) states,

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

In addition to other penalties, “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation” of Labor Code § 1102.5(b).

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 1199, 2802, and 6310 and the IWC Wage Order 16-2001.

As set forth above, the Company underpays Claimant and Company Employees and violated the Labor Code and the IWC Wage Order 16-2001 by failing to provide legally compliant meal and/or rest periods and failing to pay them all regular, minimum, and overtime wages, all reporting time wages, and all meal and rest period premium wages, as required under the Labor Code the applicable sections of the IWC Wage Order 16-2001. As a result, the Company is liable for civil penalties and Claimant will pursue all available remedies including, but not limited to, those stated herein for the Company's violations on behalf of himself and all other Company Employees to the extent allowed by law.

///

**ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES**

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802 and 2698, *et seq.*, among others, give Claimant the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code §§ 2699, *et seq.*, aggrieved employees, such as Claimant, are entitled to an award of reasonable attorneys' fees and costs, as well as civil penalties. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies including, but not limited to, those provided by the PAGA, on behalf of himself and all other Company Employees to the extent permitted by law for the violations of law described herein and those later discovered.

**CONCLUSION**

Based on the foregoing, the Company has violated the Labor Code and the IWC Wage Order 16-2001 and thereby deprived Claimant and other Company Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former non-exempt employees of the Company in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or to act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other current or former non-exempt employees of the Company in California as permitted by the PAGA.

Sincerely,

*Monique R. Rodriguez*

Monique R. Rodriguez

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

GRAHAMHOLLIS, APC; Graham S.P. Hollis (SBN 120577)/ Vilmarie Cordero (SBN 268860)/ Monique R. Rodriguez (SBN 304223)  
3555 Fifth Avenue, Suite 200, San Diego, CA 92103

TELEPHONE NO.: (619) 692-0800

FAX NO. (Optional): (619) 692-0822

ATTORNEY FOR (Name): Plaintiff Jose Contreras

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

STREET ADDRESS: 247 West Third Street

MAILING ADDRESS: 247 West Third Street

CITY AND ZIP CODE: San Bernardino, CA 92415-0210

BRANCH NAME: Civil Division

## CASE NAME:

Jose Contreras v. Commercial Concrete Constructors, Inc.; Does 1 through 50

FOR COURT USE ONLY

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

DEC 11 2020

BY Guadalupe Vasquez  
Guadalupe Vasquez DEPUTY

CASE NUMBER:

CIV SB 2026628

JUDGE:

DEPT.:

## CIVIL CASE COVER SHEET

☒ **Unlimited**  
(Amount  
demanded  
exceeds \$25,000)
 ☐ **Limited**  
(Amount  
demanded is  
\$25,000)

## Complex Case Designation

☐ Counter ☐ Joinder  
Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

## Auto Tort

☐ Auto (22)  
☐ Uninsured motorist (46)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

## Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

## Employment

☐ Wrongful termination (36)  
☒ Other employment (15)

## Contract

☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

## Real Property

☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

## Unlawful Detainer

☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

## Judicial Review

☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)
Provisionally Complex Civil Litigation  
(Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

## Enforcement of Judgment

☐ Enforcement of judgment (20)

## Miscellaneous Civil Complaint

☐ RICO (27)  
☐ Other complaint (not specified above) (42)

## Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties  
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve  
 c. ☒ Substantial amount of documentary evidence  
 d. ☒ Large number of witnesses  
 e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 f. ☒ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1 (Private Attorneys General Act of 2004 - please see attachment)

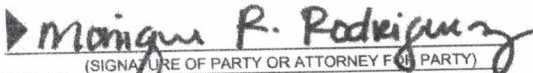
5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 9, 2020

Monique R. Rodriguez

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

### CASE TYPES AND EXAMPLES

#### Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

#### Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice–Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

#### Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

#### Employment

Wrongful Termination (36)  
Other Employment (15)

#### Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case–Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

#### Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

#### Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

#### Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ–Administrative Mandamus  
Writ–Mandamus on Limited Court Case Matter  
Writ–Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal–Labor Commissioner Appeals

#### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

#### Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

#### Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

#### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

|                                                                             |              |
|-----------------------------------------------------------------------------|--------------|
| SHORT TITLE:<br>Contreras v. Commercial Concrete Constructors, Inc., et al. | CASE NUMBER: |
|-----------------------------------------------------------------------------|--------------|

**ATTACHMENT (Number):** 1

*(This Attachment may be used with any Judicial Council form.)*

**ATTACHMENT TO CIVIL CASE COVER SHEET**

4. Number of causes of action (specify): 1 (Private Attorneys General Act of 2004)

Claims under the Private Attorneys General Act of 2004:

1. FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (Labor Code §§ 204, 226.7, 512, 558, 1198, and the "Meal Periods" section of IWC Wage Order No. 16-2001);

2. FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS OR COMPENSATION IN LIEU THEREOF (Labor Code §§ 204, 226.7, 1198, and the "Rest Periods" section of IWC Wage Order No. 16-2001);

3. FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES (Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of IWC Wage Order 16-2001);

4. FAILURE TO TIMELY PAY REPORTING TIME WAGES (Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198, and the "Reporting Time Pay" section of the IWC Wage Order 16-2001);

5. FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT (Labor Code §§ 201-204);

6. FAILURE TO REMIBURSE FOR NECESSARY BUSINESS EXPENSES (Labor Code § 2802);

7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS AND PROVIDE WRITTEN NOTICE OF SICK LEAVE (Labor Code §§ 226, 226.3, 246, and the "Records" section of IWC Wage Order No. 16-2001);

8. FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §§ 226(a), 1174, 1174.5, and the "Records" section of IWC Wage Order 16-2001); and

9. RETALIATION AGAINST EMPLOYEES WHO MADE GOOD-FAITH COMPLAINTS ABOUT UNSAFE AND UNLAWFUL WORKING CONDITIONS (Labor Code §§ 98.6, 1102.5, and 6310).

*(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)*

Page 1 of 1

*(Add pages as required)*

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Jose Contreras

Case No.: **CIV SB 2026628**

vs.

## CERTIFICATE OF ASSIGNMENT

Commercial Concrete Constructors, Inc.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the San Bernardino - Civil Division District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General ☐ Collection

### Nature of Action

### Ground

- |                                                                 |                                                                                     |
|-----------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1. Adoption                            | Petitioner resides within the district                                              |
| <input type="checkbox"/> 2. Conservator                         | Petitioner or conservatee resides within the district.                              |
| <input type="checkbox"/> 3. Contract                            | Performance in the district is expressly provided for.                              |
| <input type="checkbox"/> 4. Equity                              | The cause of action arose within the district.                                      |
| <input type="checkbox"/> 5. Eminent Domain                      | The property is located within the district.                                        |
| <input type="checkbox"/> 6. Family Law                          | Plaintiff, defendant, petitioner or respondent resides within the district.         |
| <input type="checkbox"/> 7. Guardianship                        | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8. Harassment                          | Plaintiff, defendant, petitioner or respondent resides within the district.         |
| <input type="checkbox"/> 9. Mandate                             | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 10. Name Change                        | The petitioner resides within the district.                                         |
| <input type="checkbox"/> 11. Personal Injury                    | The injury occurred within the district.                                            |
| <input type="checkbox"/> 12. Personal Property                  | The property is located within the district.                                        |
| <input type="checkbox"/> 13. Probate                            | Decedent resided or resides within or had property within the district.             |
| <input type="checkbox"/> 14. Prohibition                        | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 15. Review                             | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 16. Title to Real Property             | The property is located within the district.                                        |
| <input type="checkbox"/> 17. Transferred Action                 | The lower court is located within the district.                                     |
| <input type="checkbox"/> 18. Unlawful Detainer                  | The property is located within the district.                                        |
| <input type="checkbox"/> 19. Domestic Violence                  | The petitioner, defendant, plaintiff or respondent resides within the district.     |
| <input checked="" type="checkbox"/> 20. Other <u>Employment</u> | The causes of action arose within the district.                                     |
| <input type="checkbox"/> 21. THIS FILING WOULD                  | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT                                 |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

Commercial Concrete Constructors, Inc. - Place of Employment  
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

1731 South Grove Avenue  
ADDRESS

Ontario  
CITY

California  
STATE

91761  
ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on December 9, 2020 at San Diego,  
California.

Margarita R. Rodriguez  
Signature of Attorney/Party