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Case Management Conference  
07/21/2021 08:30 AM in 11B

STK-CV-UOE-2021-0000543

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on behalf of all other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN**

HECTOR LEON, individually and on behalf  
of all other similarly situated employees,

Plaintiff,

vs.

GOLDEN BAY FENCE PLUS IRON  
WORKS, INC., a California Corporation;  
PAUL CHAVEZ, an individual; NICHOLAS  
CHAVEZ, an individual; and DOES 1 to 100,  
inclusive,

Defendants.

Case No.

**CLASS ACTION**

**COMPLAINT FOR DAMAGES:**

- 1. Failure to Pay Overtime Wages  
(Labor Code §§ 510, 1194)**
- 2. Failure to Pay Minimum Wages  
(Labor Code § 1194)**
- 3. Meal Period Violations  
(Labor Code §§ 512, 226.7)**
- 4. Rest Period Violations  
(Labor Code §§ 226.7)**
- 5. Wage Statement Violations  
(Labor Code § 226)**
- 6. Waiting Time Penalties  
(Labor Code §§ 201-203)**
- 7. Failure to Reimburse Expenses  
(Labor Code § 2802)**
- 8. Unfair Competition (Business &  
Professions Code § 1700, *et seq.*)**
- 9. Private Attorneys General Act  
(Labor Code §§ 2699, *et seq.*)**

**DEMAND FOR JURY TRIAL**

**FILED BY FAX**

1 Plaintiff HECTOR LEON (“Plaintiff”), on behalf of himself and all other similarly situated  
2 employees, hereby files this Complaint against Defendants GOLDEN BAY FENCE PLUS IRON  
3 WORKS, INC., a California Corporation; PAUL CHAVEZ, an individual; NICHOLAS CHAVEZ,  
4 an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as “Defendants”).  
5 On information and belief, Plaintiff alleges the following:

### 6 **INTRODUCTION**

7 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by  
8 Plaintiff seeking damages and penalties for unpaid overtime and minimum wages, unpaid meal and rest  
9 period premiums, unpaid reimbursement expenses, and derivative penalties for inaccurate wage  
10 statements and for failure to keep accurate time records. Plaintiff seeks these unpaid wages and  
11 penalties, plus interest and attorney’s fees, on behalf of himself and similarly situated employees.

12 2. During all relevant times, Plaintiff and similarly situated employees worked for  
13 Defendants as hourly, non-exempt employees. Over the course of Plaintiff and similarly situated  
14 employees’ employment, Defendants intentionally denied minimum wages and overtime wages owed  
15 due to a uniform and improper rounding policy. Specifically, it was Defendants policy to convert raw  
16 time entries by employees into rounded, reduced total daily hours. It was from these reduced daily hour  
17 totals that Defendants then calculated wages owed, which resulted in a forfeiture of minimum and  
18 overtimes wages for time worked. In addition to this, Defendants routinely denied Plaintiff and  
19 similarly situated employees’ meal periods in compliance with the law and refused to allow employees  
20 all legal rest breaks. Finally, Defendants failed to pay Plaintiff and similarly situated employees’  
21 reimbursements for their required use of personnel cells phones for work purposes. As a result of these  
22 uniform practices, Defendants did not properly itemize and identify Plaintiff and similarly situated  
23 employees’ total hours worked, applicable hourly rates, or the corresponding hours worked at each  
24 hourly rate on their wage statements, and, further, did not pay Plaintiff and similarly situated employees  
25 all wages due to them at the time of their separation or termination.

### 26 **JURISDICTION AND VENUE**

27 3. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to  
28 California Code of Civil Procedure section 410.10 to determine alleged violations of the California

1 Labor Code, California Business and Professions Code, and Wage Order No. 16.

2 4. Venue is proper pursuant to Civil Procedure Code sections 395(a), and 395.5, in that  
3 some of the wrongful acts and violations of law asserted herein occurred within San Joaquin County,  
4 and Defendants' obligation to pay wages arose in San Joaquin County, pursuant to *Madera Police*  
5 *Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

6 5. Plaintiff has sought permission pursuant to California Labor Code section 2699, *et seq.* to  
7 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf  
8 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,  
9 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency  
10 ("LWDA") on approximately November 12, 2020. Plaintiff provided facts and legal bases for his  
11 claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act  
12 cause of action. Plaintiff also submitted the \$75.00 filing fee. The November 12, 2020, notice was also  
13 sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any  
14 response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative  
15 remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf  
16 of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code §  
17 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19  
18 (2005). Aggrieved Employees include, but is not limited to, the following: all individuals in California  
19 who have, or continue to, perform work for Defendants from one-year prior to November 12, 2020.

## 20 PARTIES

21 6. HECTOR LEON is an individual over the age of eighteen (18) and is a resident of the  
22 State of California.

23 7. On information and belief, Plaintiff alleges, GOLDEN BAY FENCE PLUS IRON  
24 WORKS, INC., is now and/or at all times mentioned in this Complaint was a California Corporation  
25 and the owner and operator of an industry, business and/or facility doing business in the State of  
26 California.

27 8. On information and belief, Plaintiff alleges, PAUL CHAVEZ, is now and/or at all  
28 times mentioned in this Complaint was an individual and the owner and operator of an industry,

1 business and/or facility doing business in the State of California. Plaintiff is informed and believes,  
2 and thereupon alleges, that PAUL CHAVEZ is an individual over the age of eighteen (18) and is a  
3 resident of the State of California. Plaintiff further alleges that PAUL CHAVEZ is an owner,  
4 director, officer, and/or managing agent of GOLDEN BAY FENCE PLUS IRON WORKS, INC.  
5 responsible for causing the violations outlined in the first through ninth causes of action. As such  
6 PAUL CHAVEZ is individually liable pursuant to California Labor Code section 558.1.

7 9. On information and belief, Plaintiff alleges, NICHOLAS CHAVEZ, is now and/or at  
8 all times mentioned in this Complaint was an individual and the owner and operator of an industry,  
9 business and/or facility doing business in the State of California. Plaintiff is informed and believes,  
10 and thereupon alleges, that NICHOLAS CHAVEZ is an individual over the age of eighteen (18) and  
11 is a resident of the State of California. Plaintiff further alleges that NICHOLAS CHAVEZ is an  
12 owner, director, officer, and/or managing agent of GOLDEN BAY FENCE PLUS IRON WORKS,  
13 INC. responsible for causing the violations outlined in the first through ninth causes of action. As  
14 such, NICHOLAS CHAVEZ is individually liable pursuant to California Labor Code section 558.1.

15 10. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the  
16 alter egos of each of the other Defendants named herein, corporate, or otherwise, who participated in  
17 and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the  
18 true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned  
19 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within  
20 the course and scope of such agency or employment. The Defendants are jointly and severally liable to  
21 Plaintiff.

22 11. At all times mentioned herein, each Defendant was the agent or employee of each of the  
23 other Defendants and was acting within the course and scope of such agency or employment. The  
24 Defendants are jointly and severally liable to Plaintiff.

25 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint  
26 were members of and/or engaged in a joint employment, joint venture, partnership, and common  
27 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,  
28 joint venture, partnership, and common enterprise.



- iii. Whether Defendant paid Plaintiff and members of the Plaintiff's Class at least minimum wage for all hours worked;
- iv. Whether Defendants properly paid Plaintiff and members of the Plaintiff's Class for all overtime hours worked;
- v. Whether Plaintiff and members of the Plaintiff's Class worked over eight (8) hours in a day;
- vi. Whether Plaintiff and members of the Plaintiff's Class worked over forty (40) hours in a week;
- vii. Whether Defendants had a policy and/or practice of failing to pay Plaintiff and members of the Plaintiff's Class for all hours worked;
- viii. Whether Defendants had a policy and/or practice of rounding time entries which resulted in the underpayment of wages for Plaintiff and members of the Plaintiff's Class for all hours worked;
- ix. Whether Defendants had a policy and/or practice of failing to pay Plaintiff and members of the Plaintiff's Class for all overtime hours worked;
- x. Whether Defendants had a policy and/or practice allowing for or providing Plaintiff and members of the Plaintiff's Class meal periods as required by law;
- xi. Whether Defendants had a policy and/or practice allowing for or providing Plaintiff and members of the Plaintiff's Class rest periods as required by law;
- xii. Whether Defendants accurately stated all required information on paystubs issued to Plaintiff and members of the Plaintiff's Class, including the inclusive dates of each pay period;
- xiii. Whether Defendants had a policy and/or practice that provided reimbursement of business expenses owed to Plaintiff and members of the Plaintiff's Class;
- xiv. Whether Defendants provided Plaintiff and members of the Plaintiff's Class their final wages in compliance with Labor Code sections 201 to 203.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common

1 course of conduct in violation of the law as complained of herein. Plaintiff and all  
2 members of the putative class were non-exempt employees who were not paid properly  
3 for all hours worked, were not provided legally mandated rest and meal periods, and were  
4 not paid reimbursements for personal cell phone use resulting in a failure to pay all  
5 reimbursements owed, overtime wages, minimum wages, and meal and rest period  
6 premiums. Additionally, Defendants issued Plaintiff and all members of the putative  
7 class wage statements that did not comply with Labor Code section 226. As a result,  
8 Plaintiff and each member of the putative class will have suffered the same type of harm  
9 and seek the same type of recovery based on the same legal theories.

10 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the  
11 putative class. For all relevant times, Plaintiff resided in California and worked for  
12 Defendants in California. Moreover, Plaintiff is an adequate representative of the  
13 putative class as Plaintiff has no interests that are adverse to those of putative class  
14 members. Additionally, Plaintiff has retained counsel who has substantial experience in  
15 complex civil litigation and wage and hour matters.

16 (e) Superiority: A class action is superior to other available means for the fair and efficient  
17 adjudication of the controversy since individual joinder of all members of the putative  
18 class is impracticable. Class action treatment will permit a larger number of similarly  
19 situated persons to prosecute their common claims in a single forum simultaneously,  
20 efficiently, and without the unnecessary duplication of effort and expense that numerous  
21 individual actions would engender. Further, as damages suffered by each individual  
22 member of the class may be relatively small, the expenses and burden of the individual  
23 litigation would make it difficult or impossible for individual members of the class to  
24 redress the wrongs done to them, and an important public interest will be served by  
25 addressing the matter as a class action. The cost to the court system of adjudication of  
26 such individualized litigation would be substantial. Individualized litigation would also  
27 present the potential for inconsistent or contradictory judgments.

28 //

17. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

## GENERAL ALLEGATIONS

18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully set forth herein.

19. Plaintiff worked for Defendants as a driver and shop laborer from approximately October 2018 through May 2019 and then again from September 2019 through March 2020. As part of his job duties, Plaintiff spent approximately fifty (50) percent of his time in the company shop and the other fifty (50) percent of his time on the road picking up, or delivering items, for Defendants. Plaintiff and similarly situated employees typically worked over eight (8) hours per day and forty (40) hours per week.

20. Despite this, Defendants failed to pay Plaintiff and similarly situated employees for all hours worked. First, Defendants had a policy of requiring Plaintiff and similarly situated employees to arrive to work approximately thirty (30) minutes early to prepare their workstations before clocking in to work. Defendants did not compensate employees for this preparation time. Second, Defendants had a time rounding policy that denied Plaintiff and similarly situated employees earned wages. Specifically, Defendants rounded Plaintiff and similarly situated employees' time clock punches and written time entries (when they were working off-site) to the nearest half hour.

21. Pursuant to Defendants' workplace policy, employees were required to use a punch clock at the company shop to clock in and out, or, alternatively, notate their clock in and out times in writing when they were working off-site. Unbeknownst to Plaintiff and similarly situated employees, however, Defendants did not use these time entries to calculate wages owed. Instead, Defendants would round this time into total daily hours (*e.g.* 8, 7.5, 10 hours) on a weekly timesheet. Defendants would then use this rounded time, recorded on a weekly timesheet, to calculate total wages owed. This rounding policy resulted in minimum wages and overtime being forfeited by Plaintiff and similarly situated employees. This policy also had the effect of essentially writing out from the record, any meal period violations that the time entries would have revealed. An example of how Defendants rounded and recorded Plaintiff

1 and similarly situated employees' hours worked can be seen in the below weekly time sheet created by  
2 Defendants. A timesheet like this was created for each week worked.

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|                            |           |                    |       |
|----------------------------|-----------|--------------------|-------|
| Employee Number: 322       |           | Weekending: 2/8/20 |       |
| Employee Name: Leon Hector |           |                    |       |
| Date:                      | Day:      | Job #              | Hours |
|                            | Sunday    |                    |       |
| 3 <sup>rd</sup>            | Monday    | 540p               | 8     |
| 4 <sup>th</sup>            | Tuesday   |                    | 8     |
| 5 <sup>th</sup>            | Wednesday |                    | 10    |
| 6 <sup>th</sup>            | Thursday  |                    | 8     |
| 7 <sup>th</sup>            | Friday    |                    | 8     |
| 8 <sup>th</sup>            | Saturday  |                    | 4     |
| TOTAL:                     |           |                    | 46    |

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17 22. Further, Plaintiff and similarly situated employees were regularly required to work  
18 through meal breaks, or take meal breaks late, if at all, especially when they were working on the road.  
19 In fact, when Plaintiff did stop the truck and attempt to take a meal break, he would often receive calls  
20 from management telling him to get moving and get back on the road. As a result, Plaintiff and  
21 similarly situated employees did not receive a meal period, or begin their first meal period, before  
22 completion of their fifth hour of work on multiple occasions. Defendants' weekly time sheets also did  
23 not record meal breaks taken, even though Plaintiff and similarly situated employees did punch in and  
24 out, or manually record, meal breaks. Finally, when Plaintiff and similarly situated employees worked  
25 beyond ten (10) hours, Defendants failed to provide a second meal period.

26 23. Defendants also failed to provide rest breaks of at least ten (10) minutes to Plaintiff and  
27 similarly situated employees every four (4) hours or major fraction thereof. In fact, when Plaintiff and  
28 similarly situated employees did attempt to take their ten (10) minute rest periods, they were

1 admonished by management and told to immediately get back to work. Defendants' strict policy against  
2 providing rest breaks was so extreme that Plaintiff and similarly situated employees were literally forced  
3 to sprint back and forth when they needed to use the restroom.

4 24. Additionally, during Plaintiff's employment with Defendants, he was required to use his  
5 own cell phone for work purposes and was not reimbursed by Defendants. Other similarly situated  
6 employees also used their cellphones for work purposes and Defendants did not reimburse them for this  
7 use. At some times during Plaintiff's employment, he was also required to use his personal vehicle for  
8 work purposes and was not reimbursed for mileage.

9 25. As a result of Defendants' failure to pay Plaintiff and similarly situated employees for all  
10 hours worked, Defendants failed to provide all final wages owed to Plaintiff and similarly situated  
11 employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their  
12 resignation. In addition, Defendants failed to provide Plaintiff and similarly situated employees with  
13 accurate wage statements. The wage statements Defendants provided to Plaintiff and similarly situated  
14 employees did not accurately state their total regular hours worked, gross wages and net wages, and all  
15 deductions made. As result, the calculated sick leave was inaccurate, and the wage statements were  
16 defective. The wage statements were also defective because they failed to include the inclusive dates of  
17 each pay period, as the wage statements only provided the period ending date and check date. As result,  
18 the calculated sick leave was inaccurate, and the wage statements were defective.

19 26. At all times mentioned herein, Defendants PAUL CHAVEZ and NICK CHAVEZ were  
20 officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations  
21 stated herein as they were in a position of authority with the power and responsibility to monitor,  
22 institute, and/or modify the unlawful practices, but chose to ratify them instead.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**  
25 **FAILURE TO PAY OVERTIME WAGES**  
26 **(As to all Defendants)**

27 27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully  
28 set forth herein.

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1           28. During the period Plaintiff was employed by Defendants, Defendants were required to  
2 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of  
3 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for  
4 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 16, § (3)(A); Cal.  
5 Lab. Code §§ 510, 1194.

6           29. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day  
7 and/or forty (40) hours per week on several occasions while employed by Defendants. However,  
8 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours  
9 worked at their regular rate of pay.

10          30. Plaintiff and similarly situated employees were not exempt from overtime protections  
11 employees under the California Wage Orders and Labor Code.

12          31. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
13 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
14 the extent pertinent as if set forth here in full.

15                                   **SECOND CAUSE OF ACTION**  
16                                   **FAILURE TO PAY MINIMUM WAGES**  
                                      **(As to all Defendants)**

17          32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully  
18 set forth herein.

19          33. For the period preceding the filing of this Complaint, Defendants were required to  
20 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for  
21 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, § 4(A); Cal. Lab. Code § 1194.

22          34. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of  
23 their obligation to pay the minimum wage for each hour worked but failed to do so.

24          35. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
25 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
26 the extent pertinent as if set forth here in full.

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**THIRD CAUSE OF ACTION**  
**MEAL PERIOD VIOLATIONS**  
**(As to all Defendants)**

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

38. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section 10(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

39. California Labor Code section 512 and Wage Order No. 16 section 10(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

40. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

41. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**FOURTH CAUSE OF ACTION**  
**REST PERIOD VIOLATIONS**  
**(As to all Defendants)**

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

45. California Labor Code section 226.7 and Wage Order No. 16, section 11(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

46. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

47. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

48. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**FIFTH CAUSE OF ACTION**  
**WAGE STATEMENT VIOLATIONS**  
**(As to all Defendants)**

49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully set forth herein.

50. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

*(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee*

1 *identification number other than a social security number, (8) the name*  
2 *and address of the legal entity that is the employer and, if the employer is*  
3 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*  
4 *name and address of the legal entity that secured the services of the*  
5 *employer, and (9) all applicable hourly rates in effect during the pay*  
6 *period and the corresponding number of hours worked at each hourly rate*  
7 *by the employee. The deductions made from payment of wages shall be*  
8 *recorded in ink or other indelible form, properly dated, showing the*  
9 *month, day, and year, and a copy of the statement and the record of the*  
10 *deductions shall be kept on file by the employer for at least three years at*  
11 *the place of employment or at a central location within the State of*  
12 *California.*

13 51. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an  
14 itemized statement or failed to provide an accurate and complete itemized statement showing the  
15 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not  
16 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and  
17 double time hours worked and corresponding rates of pay, and gross and net wages earned. The  
18 paystubs also did not accurately state the inclusive dates of the pay period for which Plaintiff and  
19 similarly situated employees were paid. As a result of receiving defective paystubs, Plaintiff and  
20 similarly situated employees were not able to promptly and easily determine their total hours worked  
21 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion  
22 over whether they received all wages owed and were prevented from effectively challenging information  
23 on their wage statements.

24 52. As a proximate result of Defendants' conduct, Plaintiff and similarly situated  
25 employees have been damaged as stated in the section below entitled "DAMAGES," which is  
26 incorporated here to the extent pertinent as if set forth here in full.

27 **SIXTH CAUSE OF ACTION**  
28 **WAITING TIME PENALTIES**  
**(As to all Defendants)**

53. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as though fully  
set forth herein.

54. An employer must pay an employee who is terminated all unpaid wages immediately  
upon termination. *See* Cal. Lab. Code § 201.

55. An employer must pay an employee who resigns all unpaid wages within seventy-two  
(72) hours of their resignation. *See* Cal. Lab. Code § 202.

1           56. Plaintiff and similarly situated employees did not receive all wages, including minimum  
2 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or  
3 within the required time after their separation from employment.

4           57. An employer who willfully fails to pay an employee wages in accordance with California  
5 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)  
6 days. *See* Cal. Lab. Code § 203.

7           58. Defendants knew of their obligation to pay Plaintiff and similarly situated employees'  
8 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff  
9 and similarly situated employees were being underpaid minimum and overtime wages and meal period  
10 premiums because Defendants themselves rounded the time entered by Plaintiff and similarly situated  
11 employees and then used this reduced, rounded time to calculate wages owed. Such conduct shows  
12 Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still  
13 refused to pay the remaining wages owed.

14           59. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
15 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by  
16 thirty (30) days for Defendants' failure to pay all wages due.

17                                   **SEVENTH CAUSE OF ACTION**  
18                                   **FAILURE TO REIMBURSE EXPENSES**  
19                                   **(As to all Defendants)**

20           60. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 59 as though fully  
21 set forth herein.

22           61. California Labor Code section 2802(a) states that "An employer shall indemnify his or  
23 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
24 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
25 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
26 unlawful."

27           62. Defendants required Plaintiff and similarly situated employees to use their personal  
28 phone for work purposes both while they were at, and away from, the worksite but failed to reimburse  
them for such use.

63. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**EIGHTH CAUSE OF ACTION**  
**UNFAIR COMPETITION**  
**(As to GOLDEN BAY FENCE PLUS IRON WORKS, INC. and DOES 1 to 100)**

64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. Unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

66. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

67. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163 (2000).

68. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 2802 and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

**NINTH CAUSE OF ACTION**  
**PRIVATE ATTORNEYS GENERAL ACT**  
**(As to all Defendants)**

69. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as though fully set forth herein.

//

70. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7 and Wage Order No. 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses);
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records); and
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave).

71. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

72. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

73. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**DAMAGES**

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Interest for the wages due pursuant to California Labor Code section 1194;
  - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Interest for the wages due pursuant to California Labor Code section 1194;
  - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
  - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
  - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
  - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

1           7.     As to the Seventh Cause of Action:

- 2                 a.     An amount to be proven at trial;
- 3                 b.     For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

4           8.     As to the Ninth Cause of Action:

- 5                 a.     For civil penalties as provided for in the Labor Code for each enumerated
- 6                         violation;
- 7                 b.     For those Labor Code sections, the violation of which there is no civil penalty
- 8                         provided, the default penalty provided in Labor Code section 2699(f): for any
- 9                         initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 10                        period; For any subsequent violation, two hundred dollars (\$200) for each
- 11                        aggrieved employee per pay period;
- 12                 c.     Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 13                 d.     For any other remedies as allowed by law and/or deemed appropriate by the
- 14                         Court;

15           9.     For such other and further relief as this Court may deem just and proper,

16                         including, but not limited to:

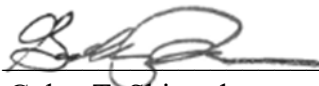
- 17                 a.     Wages as proved at trial;
- 18                 b.     Injunctive and Declaratory relief;
- 19                 c.     Attorney's fees and costs as provided for by law; and
- 20                 d.     Interest.

21

22     Dated: January 22, 2021

**Shimoda Law Corp.**

23

24                         By:  \_\_\_\_\_

25                                 Galen T. Shimoda

26                                 Justin P. Rodriguez

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