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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 03 2021

Herri R. Carter, Executive Officer/Clerk
By: Rita Nazaryan, Deputy

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

BY FAX

JOSE MENDEZ CERVERA, as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and other
aggrieved employees,

Plaintiff,

vs.

SILVER CREEK INDUSTRIES LLC, a
California limited liability company;
SILVER CREEK INDUSTRIES RS LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.:

21ST CV08701

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Jose Mendez Cervera, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee at Defendants’ location and received at least one wage statement and against whom
9 one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
10 provision regulating hours and days of work in the applicable Industrial Welfare Commission
11 (“IWC”) Wage Order were committed, as set forth in this complaint, at any time between one
12 year prior to the filing of the pre-filing written notice to the Labor and Workforce Development
13 Agency (“LWDA”) in this case on December 24, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ persons within the County of Los Angeles and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least one location within the County of Los Angeles. Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Los Angeles County, including worksites in Long Beach, California, and Plaintiff could bring this action to recover penalties in Los Angeles County, venue is proper. *Id.*

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Jose Mendez Cervera is a resident of Perris, in Riverside County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately December 2018 to May 2020. Plaintiff worked for Defendants as a Forklift Driver at their location in Perris, California. During his employment, Plaintiff typically worked eight (8) hours or more per day, and five (5) to six (6) days per week. Plaintiff's primary job duties included, without limitation, operating forklifts, pouring and smoothing concrete, cleaning the job site and tools, and assisting with general construction as needed.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with a document titled "Comprehensive Agreement Employment At-Will and Mutual/Bilateral Arbitration"

1 (“Arbitration Agreement”) during the onboarding process, which had to be reviewed and signed
2 immediately. In fact, upon information and belief, this Arbitration Agreement was one of
3 several documents presented to new employees for signature during the orientation process,
4 including the Employee Handbook, among other documents. Also, employees did not have a
5 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
6 provided to Defendants’ employees for them to sign on a take-it or leave-it basis at the time
7 they were hired, along with all of the other on-boarding documents. Furthermore, Defendants
8 did not set forth in the agreement or otherwise provide employees with the rules which will
9 govern the arbitration, instead forcing employees to seek this information out on their own.

10 8. SILVER CREEK INDUSTRIES LLC was and is, upon information and belief, a
11 California limited liability company, and at all times hereinafter mentioned, an employer whose
12 employees are engaged throughout this county, the State of California, or the various states of
13 the United States of America.

14 9. SILVER CREEK INDUSTRIES RS LLC was and is, upon information and
15 belief, a California limited liability company, and at all times hereinafter mentioned, an
16 employer whose employees are engaged throughout this county, the State of California, or the
17 various states of the United States of America.

18 10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
19 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
20 complaint and serve such fictitiously named Defendants once their names and capacities
21 become known.

22 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
23 were the partners, agents, owners, or managers of SILVER CREEK INDUSTRIES LLC and
24 SILVER CREEK INDUSTRIES RS LLC at all relevant times.

25 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein was performed by, or is attributable to, SILVER CREEK
27 INDUSTRIES LLC, SILVER CREEK INDUSTRIES RS LLC, and/or DOES 1 through 10
28 (collectively, “Defendants” or “SILVER CREEK”), each acting as the agent, employee, alter

1 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
2 was acting within the course and scope of such agency, employment, joint venture, or concerted
3 activity with legal authority to act on the others' behalf. The acts of any and all Defendants
4 were in accordance with, and represent, the official policy of Defendants.

5 13. At all relevant times, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
7 and abetted the acts and omissions of each and all the other Defendants in proximately causing
8 the damages herein alleged.

9 14. Plaintiff is informed and believes, and thereon alleges, that each of said
10 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
11 omissions, occurrences, and transactions alleged herein.

12 15. Under California law, Defendants are jointly and severally liable as employers
13 for the violations alleged herein because they have each exercised sufficient control over the
14 wages, hours, working conditions, and employment status of Plaintiff and other non-party
15 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
16 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
17 of employment, determined their rate of pay, and maintained their employment records.
18 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
19 and/or "engaged" Plaintiff and other non-party Aggrieved Employees so as to create a common-
20 law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved
21 Employees, Defendants are jointly and severally liable for the civil penalties and all other relief
22 available to Plaintiff and other non-party Aggrieved Employees under the law.

23 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
24 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
25 non-party Aggrieved Employees because Defendants have:

- 26 (a) jointly exercised meaningful control over the work performed by Plaintiff
27 and other non-party Aggrieved Employees;

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- 1 (b) jointly exercised meaningful control over Plaintiff's and other non-party
2 Aggrieved Employees' wages, hours, and working conditions, including
3 the quantity, quality standards, speed, scheduling, and operative details
4 of the tasks performed by Plaintiff and other non-party Aggrieved
5 Employees;
- 6 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
7 perform work which is an integral part of Defendants' businesses; and
- 8 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
9 Employees as a matter of economic reality in that Plaintiff and other non-
10 party Aggrieved Employees were dependent on Defendants, who shared
11 the power to set the wages of Plaintiff and other non-party Aggrieved
12 Employees and determined their working conditions, and who jointly
13 reaped the benefits from the underpayment of their wages and
14 noncompliance with other statutory provisions governing their
15 employment.

16 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
17 there has existed a unity of interest and ownership between Defendants such that any
18 individuality and separateness between the entities has ceased.

19 18. SILVER CREEK INDUSTRIES LLC, SILVER CREEK INDUSTRIES RS
20 LLC, and DOES 1 through 10 are therefore alter egos of each other.

21 19. Adherence to the fiction of the separate existence of Defendants would permit an
22 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
23 liability for the wrongful acts committed by them under the name SILVER CREEK.

24 20. Plaintiff further alleges, upon information and belief, that Defendants SILVER
25 CREEK INDUSTRIES LLC and SILVER CREEK INDUSTRIES RS LLC are alter egos of
26 each other for the following reasons:

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- (e) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), SILVER CREEK INDUSTRIES LLC and SILVER CREEK INDUSTRIES RS LLC share the same entity address and mailing address, "2830 BARRETT AVENUE, PERRIS, CA 92571";
- (f) According to Defendants' most recent "Statement of Information" forms filed with the California Secretary of State, SILVER CREEK INDUSTRIES LLC and SILVER CREEK INDUSTRIES RS LLC share the same officers, directors, and/or managers, including, but not limited to, James McGeever, who serves as Manager of SILVER CREEK INDUSTRIES LLC and SILVER CREEK INDUSTRIES RS LLC;
- (g) According to Defendants' most recent "Statement of Information" forms filed with the California Secretary of State, SILVER CREEK INDUSTRIES LLC and SILVER CREEK INDUSTRIES RS LLC share the same agent for service of process, "James McGeever"; and
- (h) On information and belief, SILVER CREEK INDUSTRIES LLC and SILVER CREEK INDUSTRIES RS LLC utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants perform offsite modular building construction of educational, commercial, medical, and government buildings, and multifamily housing. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Perris, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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1 22. In particular, Plaintiff and other non-party Aggrieved Employees, on information
2 and belief, received the same standardized documents and/or written policies. Upon
3 information and belief, the usage of standardized documents and/or written policies, including
4 new-hire documents, indicate that Defendants dictated policies at the corporate level and
5 implemented them company-wide, regardless of their employees' assigned locations or
6 positions. Upon information and belief, Defendants set forth uniform policies and procedures
7 in several documents provided at an employee's time of hire.

8 23. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their corporate headquarters in Perris, California, which processes payroll for all
10 non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
12 upon information and belief, Defendants issue the same formatted wage statements to all non-
13 exempt, hourly paid employees in California, irrespective of their work locations. Upon
14 information and belief, Defendants process payroll for departing employees in the same manner
15 throughout the State of California, regardless of the manner in which each employee's
16 employment ends.

17 24. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

19 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
21 advisors knowledgeable about California labor and wage law, employment and personnel
22 practices, and about the requirements of California law.

23 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
24 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
25 were not recorded.

26 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive certain wages for overtime compensation and that they were not receiving certain wages

1 for overtime compensation.

2 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 receive at least minimum wages for compensation and that they were not receiving at least
5 minimum wages for work that was required to be done off-the-clock. In violation of the
6 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
7 least minimum wages for work done off-the-clock.

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
11 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
12 minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not
13 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
14 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

15 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
17 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
18 (1) additional hour of pay at their regular rates of pay when they were not authorized and
19 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
20 and other non-party Aggrieved Employees were not authorized and permitted to take compliant
21 rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees
22 with payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 authorized and permitted to take a compliant rest period.

24 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 recovery periods in accordance with the Labor Code and applicable General Industry Safety
27 Order or payment of one (1) additional hour of pay at their regular rates of pay when they were
28 not provided a compliant recovery period. In violation of the California Labor Code, Plaintiff

1 and other non-party Aggrieved Employees were not provided compliant recovery periods, nor
2 did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of
3 one (1) additional hour of pay at their regular rates of pay when they were not provided a
4 compliant recovery period.

5 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 receive complete and accurate wage statements in accordance with California law. In violation
8 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
9 provided complete and accurate wage statements.

10 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that they had a duty to maintain accurate and complete payroll records in
12 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
13 and intentionally failed to do so.

14 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of all wages earned upon termination of employment. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
18 payment of all wages due, including, but not limited to, overtime wages; minimum wages; meal,
19 rest, and recovery period premiums; and/or reporting time pay, within permissible time periods.

20 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 timely payment of wages during their employment. In violation of the California Labor Code,
23 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
24 including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period
25 premiums; and/or reporting time pay, within permissible time periods.

26 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be
28 paid reporting time pay when they reported to work for their scheduled shift but were put to

1 work for less than half of the regular schedule. In violation of the California Labor Code,
2 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all reporting time
3 pay due.

4 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive reimbursement for all business-related expenses and costs they incurred during the
7 course and scope of their employment and that they did not receive reimbursement of applicable
8 business-related expenses and costs incurred.

9 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
11 other non-party Aggrieved Employees with safety devices and safeguards to protect their life,
12 safety, and health in the workplace, but willfully, knowingly, and intentionally failed to do so.

13 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
15 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
16 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
17 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
18 were properly denied wages, all in order to increase Defendants' profits.

19 40. At all times herein set forth, PAGA provides that any provision of law under the
20 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
21 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
22 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
23 behalf of themselves and other current or former employees pursuant to procedures outlined in
24 California Labor Code section 2699.3.

25 41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
26 person who was employed by the alleged violator and against whom one or more of the alleged
27 violations was committed."

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1 42. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

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

7 (a) The aggrieved employee shall give written notice by online filing
8 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
9 the employer of the specific provisions of the California Labor Code
10 alleged to have been violated, including the facts and theories to support
11 the alleged violations.

12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be accompanied
14 by a filing fee of seventy-five dollars (\$75).

15 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
16 employer and the aggrieved employee by certified mail that it does not
17 intend to investigate the alleged violation within sixty (60) calendar days
18 of the postmark date of the Employee’s Notice. Upon receipt of the
19 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
20 (65) calendar days of the postmark date of the Employee’s Notice, the
21 aggrieved employee may commence a civil action pursuant to California
22 Labor Code section 2699 to recover civil penalties in addition to any other
23 penalties to which the employee may be entitled.

24 44. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
25 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
26 other than those listed in Section 2699.5 after the following requirements have been met:

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- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing to the LWDA and by certified mail to the employer of the
3 specific provisions of the California Labor Code alleged to have been
4 violated (other than those listed in Section 2699.5), including the facts
5 and theories to support the alleged violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(c) and any employer response to that notice shall be accompanied
8 by a filing fee of seventy-five dollars (\$75).
- 9 (c) The employer may cure the alleged violation within thirty-three (33)
10 calendar days of the postmark date of the notice. The employer shall give
11 written notice by certified mail within that period of time to the aggrieved
12 employee or representative and the agency if the alleged violation is
13 cured, including a description of actions taken, and no civil action
14 pursuant to Section 2699 may commence. If the alleged violation is not
15 cured within the 33-day period, the employee may commence a civil
16 action pursuant to Section 2699.

17 45. On December 24, 2020, Plaintiff provided written notice by online filing to the
18 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
19 Code alleged to have been violated, including facts and theories to support the alleged
20 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
21 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
22 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
23 PAGA Case Number LWDA-CM-816427-20. A true and correct copy of Plaintiff's written
24 notice to the LWDA and Defendants dated December 24, 2020, is attached hereto as "Exhibit
25 1."

26 46. As of the filing date of this complaint, over 65 days have passed since Plaintiff
27 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
28 investigate Plaintiff's claims, and Defendants have not cured the violations.

1 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
4 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

5 48. Labor Code section 558(a) provides “[a]ny employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provision regulating hours and days of work in any order of the Industrial Welfare Commission
8 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
9 each underpaid employee for each pay period for which the employee was underpaid (2)
10 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
11 each pay period for which the employee was underpaid” Labor Code section 558(c)
12 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
13 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
14 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
15 himself, all other non-party Aggrieved Employees, and the State of California against
16 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
17 IWC wage order. Plaintiff, acting in the public interest as a private attorney general, does not
18 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
19 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.

20 49. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
22 Employees’ rights by violating various sections of the California Labor Code as set forth above.

23 50. As set forth below, Defendants have violated numerous provisions of both the
24 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
25 Order.

26 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
28 attorney general, seeks assessment and collection of civil penalties for himself, all other non-

1 party Aggrieved Employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
3 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

4 **FIRST CAUSE OF ACTION**

5 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

6 **(Against all Defendants)**

7 52. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 53. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
10 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
11 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
12 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
13 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
14 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, 6401,
15 and 6403.

16 54. Defendants’ conduct, as alleged herein, violates numerous sections of the
17 California Labor Code, including, but not limited to, the following:

- 18 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
19 wage order for Defendants’ failure to compensate Plaintiff and other non-
20 party Aggrieved Employees with all required overtime pay, as set forth
21 below;
- 22 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
23 applicable IWC wage order for Defendants’ failure to compensate
24 Plaintiff and other non-party Aggrieved Employees with at least
25 minimum wages for all hours worked, as set forth below;
- 26 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
27 applicable IWC wage order for Defendants’ failure to provide Plaintiff
28 and other non-party Aggrieved Employees with meal periods, as set forth

below;

- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable General Industry Safety Order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with recovery periods, as set forth below;
- (f) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (g) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (i) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (j) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, such as personal protective equipment, to Plaintiff and other non-party Aggrieved Employees, as set forth below.

1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 55. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

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

12 57. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

17 58. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

22 59. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
25 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
26 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
27 the seventh (7th) day of work.

28 ///

1 60. First, during the relevant period, Defendants had, and continue to have, a
2 company-wide policy and/or practice of improperly rounding employees' clock-in and clock-
3 out times in their timekeeping system to the nearest quarter (0.25) of an hour. Defendants'
4 rounding policy resulted in the failure to compensate Plaintiff and other non-party Aggrieved
5 Employees fully for all hours worked, causing Plaintiff and other non-party Aggrieved
6 Employees to not be paid overtime wages for all of the overtime hours they actually worked.
7 Defendants' policy of rounding is unfair and has, over time, resulted in the underpayment of
8 wages to Plaintiff and other non-party Aggrieved Employees. To the extent Defendants'
9 rounding policy has taken away time worked that was eligible for overtime, Plaintiff and other
10 non-party Aggrieved Employees were denied overtime pay for all hours worked.

11 61. Second, during the relevant period, Defendants had, and continue to have, a
12 policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to
13 continue to perform work-related tasks while off-the-clock, such as communicating with
14 Defendants' management via their personal cellular phones or continuing to perform their
15 assigned duties. For example, about twice per week, Plaintiff's supervisor would call him to
16 discuss assignments and execution of tasks, which took up to five (5) minutes per instance. On
17 information and belief, other non-party Aggrieved Employees continued working on their
18 assignments after clocking out for their scheduled shifts. Thus, Defendants failed to track this
19 time spent working after scheduled shifts, and Plaintiff and other non-party Aggrieved
20 Employees received no compensation for this time.

21 62. Third, Defendants had a company-wide loss prevention policy requiring
22 employees to undergo mandatory security checks once per week by a managerial employee
23 when entering or leaving the premises. As a result of Defendants' policy, Plaintiff and other
24 non-party Aggrieved Employees were required to undergo security screenings on Fridays before
25 clocking in or after clocking out at the end of a shift prior to entering or exiting the work
26 premises. For example, on Fridays, Plaintiff and other non-party Aggrieved Employees were
27 required to wait up to 20-30 minutes per instance for management to check their tool bags before
28 clocking in at the beginning of their shifts or after clocking out at the end of their shifts.

1 Although Defendants' requirement that Plaintiff and other non-party Aggrieved Employees
2 undergo security checks was mandatory, Defendants did not compensate them for the time it
3 took them to wait in line and undergo these checks.

4 63. Fourth, on information and belief, Defendants had, and continue to have, a
5 company-wide policy staffing their locations strictly based on the labor hours or labor budget
6 set by the corporate office. Defendants' use of a labor budget resulted in chronic understaffing,
7 such that there were too few employees on duty to handle the heavy workload, which included
8 meeting construction deadlines, and provide meal period coverage. As a result of this lack of
9 meal period coverage, Plaintiff and other non-party Aggrieved Employees were not always
10 afforded uninterrupted 30-minute meal periods to which they were entitled. For example,
11 Plaintiff and other non-party Aggrieved Employees were typically required to work through
12 their meal periods in order to complete their assigned tasks, such as pouring and smoothing
13 concrete. Accordingly, Plaintiff and other non-party Aggrieved Employees missed meal periods
14 and/or had meal periods cut short or interrupted in order to handle their workloads.

15 64. Additionally, Defendants have, on a company-wide basis, failed to adhere to a
16 schedule of meal periods. This company-wide practice, coupled with the heavy workload and
17 pressure from Defendants to complete assigned tasks, impeded Plaintiff and other non-party
18 Aggrieved Employees from taking timely, compliant meal periods. For example, Plaintiff
19 missed meal periods approximately 5-6 times per week because he was required to assist with
20 pouring concrete. When Plaintiff's team asked Defendants' management to reschedule the meal
21 period to an earlier or later time to avoid conflicting with active concrete pours, Defendants'
22 management refused their requests and informed them the schedule would stay as-is. As further
23 example, Plaintiff's unpaid meal periods were interrupted or cut short daily over a period of two
24 (2) weeks, for about 5-10 minutes per instance, due to Defendants' management requesting
25 progress reports on work assignments. Further, because Defendants frowned upon employees
26 accruing meal period penalties, Defendants required Plaintiff and other non-party Aggrieved
27 Employees to clock out for meal periods and/or adjusted employee time records to reflect
28 compliant meal periods, regardless of whether they had received a compliant meal period or

1 not, in order to strictly limit meal penalties that Defendants would otherwise owe. Thus,
2 Plaintiff and other non-party Aggrieved Employees performed work during meal periods for
3 which they were not paid.

4 65. Defendants knew or should have known that as a result of these company-wide
5 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
6 their assigned duties during meal periods and off-the-clock before and after their shifts, and
7 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
8 and other non-party Aggrieved Employees regularly worked shifts of eight (8) hours a day or
9 more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
10 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
11 overtime wages for all of the overtime hours they actually worked. Defendants' failure to pay
12 Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation, as
13 required by California law, violates the provisions of California Labor Code sections 510 and
14 1198.

15 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
16 the balance of overtime compensation as required by California law, violates the provisions of
17 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
18 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
19 2699(a), (f), and (g).

20 **FAILURE TO PAY MINIMUM WAGES**

21 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

22 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
23 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
24 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
25 Compensable work time is defined by the applicable wage order as "the time during which an
26 employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, §
28 11010(2)(G) (defining "Hours Worked").

1 68. As set forth above, during the relevant time period, due to Defendants' policy of
2 rounding Plaintiff and other non-party Aggrieved Employees' clock-in and clock-out times to
3 the quarter-hour in their timekeeping system, Defendants failed to compensate Plaintiff and
4 other non-party Aggrieved Employees fully for all hours worked. Also, as stated, Defendants
5 required that Plaintiff and other non-party Aggrieved Employees perform work off-the-clock
6 after their scheduled shifts, including communicating with supervisors on their personal cellular
7 phones regarding work-related matters, completing work assignments, and/or submitting to off-
8 the-clock security checks.

9 69. In addition, due to Defendants' uniform practice of utilizing labor budgets,
10 resultant understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal
11 periods, and subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved
12 Employees were forced to forego meal periods and/or had their meal periods interrupted by
13 work. In addition, Defendants systematically failed to pay Plaintiff and other non-party
14 Aggrieved Employees for actual hours worked during unpaid meal periods because these hours
15 were not always correctly recorded. Moreover, as set forth above, in order to prevent employees
16 from accruing meal period penalties, Defendants' management required Plaintiff and other non-
17 party Aggrieved Employees to clock out for meal periods and/or adjusted their time records to
18 reflect compliant meal periods, but required them to continue working, time for which they were
19 not paid.

20 70. Thus, Defendants did not pay at least minimum wages for all hours worked by
21 Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock hours
22 did not qualify for overtime premium payment, Defendants did not pay at least minimum wages
23 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
24 1194, and 1197. Accordingly, Defendants regularly failed to pay at least minimum wages to
25 Plaintiff and other non-party Aggrieved Employees for all of the hours they worked in violation
26 of California Labor Code sections 1182.12, 1194, 1197, and 1198.

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71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

72. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

73. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

74. At all relevant times herein set forth, California Labor Code section 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

76. As stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing pursuant to their labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented

1 Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal
2 periods to which they were entitled. Additionally, Defendants failed to adhere to a schedule of
3 meal periods, resulting in Plaintiff and other non-party Aggrieved Employees having their meal
4 periods interrupted to return to work or waiting extended periods of time before taking meal
5 periods, due to the workload and pressure to meet construction deadlines. For example, Plaintiff
6 missed meal periods approximately 5-6 times per week because he was required to assist with
7 pouring concrete. When Plaintiff's team asked Defendants' management to reschedule the meal
8 period to an earlier or later time to avoid conflicting with active concrete pours, Defendants'
9 management refused their requests and informed them the schedule would stay as-is. Plaintiff's
10 unpaid meal periods were also interrupted or cut short daily over a period of two (2) weeks, for
11 about 5-10 minutes per instance, due to Defendants' management requesting progress reports
12 on work assignments. Further, because Defendants frowned upon employees accruing meal
13 period penalties, Defendants required Plaintiff and other non-party Aggrieved Employees to
14 clock out for meal periods and/or adjusted employee time records to reflect compliant meal
15 periods, regardless of whether they had received a compliant meal period or not, in order to
16 strictly limit meal penalties that Defendants would otherwise owe.

17 77. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
18 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
19 hours in one day. Plaintiff and other non-party Aggrieved Employees worked shifts in excess
20 of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Plaintiff
21 and other non-party Aggrieved Employees did not sign valid meal period waivers on days that
22 they were entitled to meal periods and were not relieved of all duties.

23 78. Defendants knew or should have known that as a result of their company-wide
24 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
25 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
26 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
27 Employees meal period premiums when meal periods were missed, late, short, and/or
28 interrupted.

1 79. Furthermore, Defendants engaged in a company-wide practice and/or policy of
2 not paying all meal period premiums owed when compliant meal periods are not provided.
3 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
4 not received premium pay for missed, interrupted, or late meal periods.

5 80. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
6 Employees compliant meal periods and failed to pay the full meal period premiums due.
7 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
8 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
9 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
10 (g).

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

12 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

13 81. At all relevant times herein set forth, the applicable IWC Wage Order and
14 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
15 non-party Aggrieved Employees' employment by Defendants.

16 82. At all relevant times, the applicable IWC Wage Order provides that "[e]very
17 employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period" and that the "rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
20 hours or major fraction thereof" unless the total daily work time is less than three and one-half
21 (3½) hours.

22 83. At all relevant times, California Labor Code section 226.7 provides that no
23 employer shall require an employee to work during any rest period mandated by an applicable
24 order of the California IWC. To comply with its obligation to authorize and permit rest periods
25 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
26 must "relinquish any control over how employees spend their break time, and relieve their
27 employees of all duties—including the obligation that an employee remain on call. A rest
28 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th

1 257, 269-270 (2016).

2 84. Pursuant to the applicable IWC Wage Order and California Labor Code section
3 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from
4 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
5 required rest period was not authorized and permitted.

6 85. During the relevant time period, Defendants regularly failed to authorize and
7 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
8 per each four (4) hour period worked or major fraction thereof. As with meal periods,
9 Defendants' policies and/or practices of utilizing labor budgets, resultant understaffing, and
10 assigning of heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees
11 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
12 to adhere to a schedule of rest periods, which, coupled with Defendants' failure to provide
13 adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees
14 not being authorized and permitted to take rest periods. Defendants also had a policy or practice
15 of failing authorize and permit Plaintiff and other non-party Aggrieved Employees to take third
16 rest periods when they worked in excess of 10 hours in one day.

17 86. Additionally, during the relevant time period, Defendants maintained and
18 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and
19 other non-party Aggrieved Employees remain on the work premises during their rest periods.
20 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the
21 premises during rest periods, they were denied the ability to use rest periods freely for their own
22 purposes. Thus, Defendants effectively maintained control over Plaintiff and other non-party
23 Aggrieved Employees during rest periods and/or caused them to perform work during rest
24 periods.

25 87. As a result of Defendants' practices and policies, Plaintiff and other non-party
26 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
27 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
28 entitled. For example, during his employment, Plaintiff missed his rest periods 4-5 days per

1 week due to the heavy workload and the lack of coverage for rest periods.

2 88. Defendants have also engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
5 Employees have not received premium pay for all missed rest periods.

6 89. Defendants' conduct violates the applicable IWC Wage Order and California
7 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
8 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
9 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE HEAT RECOVERY PERIODS**
11 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198, AND CODE OF**
12 **REGULATIONS TITLE 8, SECTION 3395**

13 90. At all relevant times herein set forth, the applicable General Industry Safety
14 Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's
15 and other non-party Aggrieved Employees' employment by Defendants

16 91. At all relevant times, California Labor Code section 226.7(a) defines "recovery
17 period" to mean a cooldown period afforded an employee to prevent heat illness. California
18 Labor Code section 226.7 provides that no employer shall require an employee to work during
19 any recovery period mandated by an applicable order of the California IWC, the Occupational
20 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
21 applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the
22 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
23 areas with shade at all times while employees are present that are either open to the air or
24 provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore,
25 "[t]he amount of shade present shall be at least enough to accommodate the number of
26 employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade
27 without having to be in physical contact with each other." *Id.* "Employees shall be allowed
28 and encouraged to take a preventative cool-down rest in the shade when they feel the need to

1 do so to protect themselves from overheating. Such access to shade shall be permitted at all
2 times.” *Id.* Pursuant to California Labor Code section 226.7(c), Plaintiff and other non-party
3 Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at
4 their regular rates of pay for each work day that a recovery period was not provided.

5 92. During the relevant time period, Defendants violated California Labor Code
6 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because Defendants
7 failed to provide Plaintiff and other non-party Aggrieved Employees with recovery periods. For
8 example, Plaintiff was not provided a shaded area for recovery and were not permitted to take
9 recovery periods in a shaded area while working at the job site.

10 93. Defendants have also engaged in a company-wide practice and/or policy of not
11 paying all recovery period premiums owed when compliant recovery periods are not provided.
12 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
13 not received premium pay for all missed recovery periods.

14 94. Defendants’ conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
16 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
17 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
19 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

20 95. At all relevant times herein, California Labor Code section 226(a) provides that
21 every employer shall furnish each of his or her employees an accurate and complete itemized
22 wage statement in writing, including, but not limited to, the name and address of the legal entity
23 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
24 rates of pay.

25 96. During the relevant time period, Defendants have knowingly and intentionally
26 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
27 inaccurate wage statements. For example, Defendants issued uniform wage statements to
28 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages

1 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
2 the pay period, including overtime rates of pay, and the corresponding number of hours worked
3 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
4 and 226(a)(9).

5 97. Because Defendants did not record the time Plaintiff and other non-party
6 Aggrieved Employees spent working off-the-clock, deducted time from their records for meal
7 periods that were interrupted and/or missed (and therefore time for which they should have been
8 paid), and/or improperly rounded their total hours worked, Defendants did not list the correct
9 amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
10 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
11 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
12 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
13 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
14 number of hours worked at each hourly rate, in violation of section 226(a)(9).

15 98. The wage statement deficiencies also include, among other things, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
17 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
18 the last four digits of his or her social security number or an employee identification number
19 other than a social security number; failing to list the name and address of the legal entity that
20 is the employer; failing to list the inclusive dates of the period for which aggrieved employees
21 were paid; and/or failing to state all hours worked as a result of not recording or stating the
22 hours they worked off-the-clock.

23 99. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
25 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
26 of any employees for longer hours than those fixed by the order or under conditions of labor
27 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
28 are required to keep accurate time records showing when the employee begins and ends each

1 work period and meal period. During the relevant time period, Defendants failed, on a
2 company-wide basis, to keep accurate records of work period and meal period start and stop
3 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As
4 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff's
5 and other non-party Aggrieved Employees' time records by recording that compliant meal
6 periods were taken regardless of if or when meal periods were actually taken, and thereby failed
7 to keep accurate records of meal start and end times for Plaintiff and other non-party Aggrieved
8 Employees. Furthermore, in light of Defendants' failure to provide Plaintiff and other non-
9 party Aggrieved Employees with second 30-minute meal periods to which they were entitled,
10 Defendants kept no records of meal start and end times for second meal periods.

11 100. California Labor Code section 1174(d) provides that "[e]very person employing
12 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
13 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants
14 or establishments at which employees are employed, payroll records showing the hours worked
15 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
16 piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor
17 Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to
18 maintain accurate and complete records as required by section 1174(d). During the relevant
19 time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to
20 maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees
21 showing the daily hours they worked and the wages paid thereto as a result of failing to record
22 the off-the-clock hours that they worked and improperly rounding Plaintiff's and other non-
23 party Aggrieved Employees' total hours worked.

24 101. Because Defendants failed to provide the correct net and gross wages earned,
25 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
26 other non-party Aggrieved Employees have been prevented from verifying, solely from
27 information on the wage statements themselves, that they were paid correctly and in full.
28 Instead, Plaintiff and other non-party Aggrieved Employees have had to look to sources outside

1 of the wage statements themselves and reconstruct time records to determine whether in fact
2 they were paid correctly and the extent of underpayment, thereby causing them injury.

3 102. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
4 and 1198. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
5 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

6 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

7 **VIOLATION OF LABOR CODE SECTION 204**

8 103. At all relevant times herein set forth, California Labor Code section 204 requires
9 that all wages earned by any person in any employment between the 1st and the 15th days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee,
11 are due and payable between the 16th and the 26th day of the month during which the labor was
12 performed. Labor Code section 204 further provides that all wages earned by any person in any
13 employment between the 16th and the last day, inclusive, of any calendar month, other than
14 those wages due upon termination of an employee, are due and payable between the 1st and the
15 10th day of the following month.

16 104. At all relevant times herein, California Labor Code section 204 also requires that
17 all wages earned for labor in excess of the normal work period shall be paid no later than the
18 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
19 Code section 204 provides that the requirements of this section are deemed satisfied by the
20 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
21 than seven (7) calendar days following the close of the payroll period.

22 105. During the relevant time period, Defendants willfully failed to pay Plaintiff and
23 other non-party Aggrieved Employees all wages due to them within any time period specified
24 by California Labor Code section 204 including, but not limited to, overtime wages; minimum
25 wages; meal, rest, and recovery period premiums; and/or reporting time pay.

26 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

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1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

3 107. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two (72)
7 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.

10 108. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
12 above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery
13 period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-
14 two (72) hours of their leaving Defendants' employ.

15 109. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
18 California Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved
19 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256
20 and/or 2699(a), (f), and (g).

21 **FAILURE TO PAY REPORTING TIME PAY**

22 **VIOLATION OF LABOR CODE SECTION 1198**

23 110. California Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code
25 section 1198 requires that "... the standard conditions of labor fixed by the commission shall be
26 the ... standard conditions of labor for employees. The employment of any employee ... under
27 conditions of labor prohibited by the order is unlawful."

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111. California Code of Regulations, Title 8, section 11010(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid 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 the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

112. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

113. During the relevant time period, Defendants had a company-wide practice of sending Plaintiff and other non-party Aggrieved Employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Plaintiff and other non-party Aggrieved Employees for half of their scheduled shift. For example, on at least two (2) occasions, Plaintiff reported to work for his scheduled shift, but would be sent home early by Defendants’ management due to inclement weather. Although Plaintiff and other non-party Aggrieved Employees reported to work based on the schedule that Defendants provided to them, Defendants would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

114. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

3 115. At all times herein set forth, California Labor Code section 2802 provides that
4 an employer must reimburse employees for all necessary expenditures and losses incurred by
5 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
6 to prevent employers from passing off their cost of doing business and operating expenses on
7 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
8 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen the
9 employer requires the use of tools or equipment or they are necessary to the performance of a
10 job, such tools and equipment shall be provided and maintained by the employer, except that an
11 employee whose wages are at least two (2) times the minimum wage may provide and maintain
12 hand tools and equipment customarily required by the particular trade or craft.”

13 116. First, during the relevant time period, Defendants, on a company-wide basis,
14 required that Plaintiff and non-party Aggrieved Employees use their own personal cellular
15 phones and/or cellular data to carry out their job duties, but failed to reimburse them for the
16 costs of their work-related cellular phone expenses. For example, Plaintiff and non-party
17 Aggrieved Employees received work-related calls from their supervisors discussing their
18 assignments with Defendants’ managers during shifts and off-the-clock. Although Defendants
19 required Plaintiff and non-party Aggrieved Employees to utilize their personal cellular phones
20 to carry out their work-related responsibilities, Defendants failed to fully reimburse them for
21 this cost.

22 117. Second, during the relevant time period, Defendants, on a company-wide basis,
23 forced Plaintiff and non-party Aggrieved Employees to purchase their own supplies and tools,
24 such as tool belts, hammers, a helmet, a toolbox, and measuring tapes. For example, Plaintiff
25 was required to spend approximately \$80.00 on a tool belt, \$100.00 on hammers, \$50.00 on a
26 helmet, \$180.00 on a toolbox, and \$225.00 on tape measures, in order to carry out his work-
27 related duties. Although Defendants required Plaintiff and non-party Aggrieved Employees to
28 purchase their own supplies and tools for use on the job, Defendants did not reimburse them for

1 these expenses.

2 118. Third, Defendants, on a company-wide basis, mandated that Plaintiff and non-
3 party Aggrieved Employees purchase special safety shoes such as steel-toed boots, which they
4 were required to wear while at work. Plaintiff and non-party Aggrieved Employees purchased
5 steel-toed boots to wear inside Defendants' facilities and construction zones, but were not
6 reimbursed fully for these costs.

7 119. Defendants could have provided Plaintiff and non-party Aggrieved Employees
8 with the actual tools for use on the job, such as company phones, supplies and tools, and steel-
9 toed boots to be used for fulfilling work-related tasks. Or, Defendants could have reimbursed
10 employees for the costs of their cellular phone usage, supply and tool expenses, and boot
11 expenses. Instead, Defendants passed these operating costs off onto Plaintiff and non-party
12 Aggrieved Employees. At all relevant times, Plaintiff and non-party Aggrieved Employees did
13 not earn at least two (2) times the minimum wage.

14 120. Defendants' company-wide policy and/or practice of passing on their operating
15 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
16 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
17 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

19 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

20 121. At all times herein set forth, California Labor Code section 6401 provides that
21 employers must furnish and use safety devices and safeguards, and adopt and use practices,
22 means, methods, operations, and processes which are reasonably adequate to render the
23 employment and place of employment safe and healthy. California Labor Code Section 6401
24 further provides that an employer must do everything reasonably necessary to protect the life,
25 safety and health of its employees. California Labor Code section 6403(a) requires that
26 employers provide and use safety devices and safeguards reasonably adequate to render the
27 employment and place of employment safe.

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122. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-party Aggrieved Employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that Defendants required employees to wear certain personal protective equipment, including steel-toed boots, Defendants failed to provide such reasonably necessary equipment to Plaintiff and other non-party Aggrieved Employees to keep them safe.

123. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with safety devices and safeguards for the workplace violates California Labor Code sections 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226.7, 516, and 1198 (by failing to provide heat recovery periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by

1 failing to provide safety devices and safeguards).

2 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
3 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
4 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and
5 6403;

6 4. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
9 1194, 1197, 1198, 2802, 6401, and 6403;

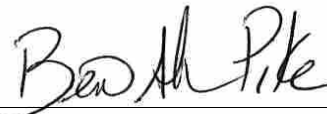
10 5. For pre-judgment and post-judgment interest as provided by law; and

11 6. For such other and further relief as the Court may deem equitable and
12 appropriate.

13
14 Dated: March 3, 2021

Respectfully submitted,

Capstone Law APC

15
16
17 By: 

18 Bevin Allen Pike

19 Orlando Villalba

20 Daniel Jonathan

Trisha K. Monesi

21 Attorneys for Jose Mendez Cervera
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EXHIBIT “1”

MICHELLE KENNEDY
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December 24, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jose Mendez v. Silver Creek Industries LLC*

Dear PAGA Administrator:

This office represents Jose Mendez in connection with his claims under the California Labor Code. Mr. Mendez was an employee of SILVER CREEK INDUSTRIES LLC and/or SILVER CREEK INDUSTRIES RS LLC. For the purpose of this letter, Mr. Mendez collectively refers to these entities as “SILVER CREEK”.

The employers may be contacted directly at the addresses below:

SILVER CREEK INDUSTRIES LLC
2830 BARRETT AVENUE
PERRIS CA 92571

SILVER CREEK INDUSTRIES RS LLC
2830 BARRETT AVENUE
PERRIS CA 92571

Mr. Mendez intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Mendez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SILVER CREEK as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SILVER CREEK employed Mr. Mendez as an hourly paid, non-exempt employee from approximately December 2018 to May 2020. Mr. Mendez worked for SILVER CREEK as a Forklift Driver at the SILVER CREEK facility in Perris, California. During his employment, Mr. Mendez typically worked eight (8) to ten (10) hours or more per day, five (5) to six (6) days per week, from 6:00 a.m. to 2:30 p.m. At the time his employment ended, Mr. Mendez was compensated

approximately \$15.00 per hour. His job duties included, without limitation, operating forklifts, pouring and smoothing concrete, cleaning the job site and tools, and assisting with general construction as needed.

SILVER CREEK committed one or more of the following Labor Code violations against Mr. Mendez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SILVER CREEK’s Company-Wide and Uniform Payroll and HR Practices

SILVER CREEK INDUSTRIES LLC (formerly known as “Silver Creek Industries, Inc.”) and SILVER CREEK INDUSTRIES RS LLC are California limited liability companies and perform offsite modular building construction of educational, commercial, medical, and government buildings, and multifamily housing. Upon information and belief, SILVER CREEK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Perris, California, for all non-exempt, hourly paid employees working for SILVER CREEK in California, including Mr. Mendez and other aggrieved employees. At all relevant times, SILVER CREEK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mendez and other aggrieved employees, regardless of its location or position.

Upon information and belief, SILVER CREEK maintains a centralized Payroll department at its corporate headquarters in Perris, California, which processes payroll for all non-exempt, hourly paid employees working for SILVER CREEK in California, including Mr. Mendez and other aggrieved employees. Further, SILVER CREEK issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Mendez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SILVER CREEK utilized the same methods and formulas when calculating wages due to Mr. Mendez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Mendez’s experience and counsel’s review of those records currently available relating to Mr. Mendez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Mendez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

SILVER CREEK willfully failed to pay all overtime wages owed to Mr. Mendez and other aggrieved employees. During the relevant time period, Mr. Mendez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, SILVER CREEK had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in their timekeeping system to the nearest quarter (0.25) of an hour. SILVER CREEK's rounding policy resulted in the failure to compensate Mr. Mendez and other aggrieved employees fully for all hours worked, causing Mr. Mendez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. SILVER CREEK's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Mendez and other aggrieved employees. To the extent SILVER CREEK's rounding policy has taken away time worked that was eligible for overtime, Mr. Mendez and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, SILVER CREEK had, and continues to have, a policy and/or practice of requiring Mr. Mendez and other aggrieved employees to continue to perform work-related tasks while off-the-clock, such as communicating with SILVER CREEK's management via their personal cell phones or continuing to perform their assigned duties. For example, about twice per week, Mr. Mendez's supervisor would call him to discuss assignments and execution of tasks, which took up to 5 minutes per instance. On information and belief, other aggrieved employees continued working on their assignments after clocking out for their scheduled shifts. Thus, SILVER CREEK failed to track this time spent working after scheduled shifts, and Mr. Mendez and other aggrieved employees received no compensation for this time.

Third, SILVER CREEK had a company-wide loss prevention policy requiring employees to undergo mandatory security checks once per week by a managerial employee when entering or leaving the premises. As a result of SILVER CREEK's policy, Mr. Mendez and other aggrieved employees were required to undergo security screenings on Fridays before clocking in or after clocking out at the end of a shift prior to entering or exiting the premises. For example, on Fridays, Mr. Mendez and other aggrieved employees were required to wait up to 20-30 minutes per instance for management to check their tool bags before clocking in at the beginning of their shifts or after clocking out at the end of their shifts. Although SILVER CREEK's requirement that Mr. Mendez and other aggrieved employees undergo security checks was mandatory, SILVER CREEK did not compensate them for the time it took them to wait in line and undergo these checks.

Fourth, on information and belief, SILVER CREEK had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. SILVER CREEK's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included meeting construction deadlines, and provide meal period coverage. As a result of this lack of meal period coverage, Mr. Mendez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods to which they were entitled. For example, Mr. Mendez and other aggrieved employees were typically required to work through their meal periods in order to complete their assigned tasks, such as pouring and smoothing concrete. Accordingly, Mr. Mendez and other aggrieved employees

missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads.

Additionally, SILVER CREEK has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from SILVER CREEK to complete assigned tasks, impeded Mr. Mendez and other aggrieved employees from taking timely, compliant meal periods. For example, Mr. Mendez missed meal periods approximately 5-6 times per week because he was required to assist with pouring concrete. When his team asked management to reschedule the meal period to an earlier or later time to avoid conflicting with active concrete pours, management refused their requests and informed them the schedule would stay as-is. As further example, Mr. Mendez's unpaid meal periods were interrupted or cut short daily over a period of two (2) weeks, for about 5-10 minutes per instance, due to SILVER CREEK's management requesting progress reports on work assignments. Further, because SILVER CREEK frowned upon employees accruing meal period penalties, SILVER CREEK required Mr. Mendez and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that SILVER CREEK would otherwise owe. Thus, Mr. Mendez and other aggrieved employees performed work during meal periods for which they were not paid.

Because Mr. Mendez and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Mendez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. SILVER CREEK's failure to pay Mr. Mendez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, SILVER CREEK did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SILVER CREEK paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SILVER CREEK failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SILVER CREEK failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Mendez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, due to SILVER CREEK's policy of rounding Mr. Mendez's and other aggrieved employees' clock-in and clock-out times to the quarter-hour in its timekeeping system, SILVER CREEK failed to compensate Mr. Mendez and other aggrieved employees fully for all hours worked. Also, as stated, SILVER CREEK required that Mr. Mendez and other aggrieved employees perform work off-the-clock after their scheduled shifts, including communicating with supervisors on their personal cellular phones regarding work-related matters, completing work assignments, and/or submitting to off-the-clock security checks.

In addition, due to SILVER CREEK's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Mendez and other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. In addition, SILVER CREEK systematically failed to pay Mr. Mendez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, SILVER CREEK's management required Mr. Mendez and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, SILVER CREEK did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SILVER CREEK did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, SILVER CREEK regularly failed to pay at least minimum wages to Mr. Mendez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Mendez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than

twelve (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.

As stated, SILVER CREEK has, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Mendez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, SILVER CREEK failed to adhere to a schedule of meal periods, resulting in Mr. Mendez and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet construction deadlines. For example, Mr. Mendez missed meal periods approximately 5-6 times per week because he was required to assist with pouring concrete. When his team asked management to reschedule the meal period to an earlier or later time to avoid conflicting with active concrete pours, management refused their requests and informed them the schedule would stay as-is. Mr. Mendez's unpaid meal periods were also interrupted or cut short daily over a period of two (2) weeks, for about 5-10 minutes per instance, due to SILVER CREEK's management requesting progress reports on work assignments. Further, because SILVER CREEK frowned upon employees accruing meal period penalties, SILVER CREEK required Mr. Mendez and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that SILVER CREEK would otherwise owe.

Moreover, SILVER CREEK did not provide Mr. Mendez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Mendez and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Mendez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

SILVER CREEK knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Mendez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SILVER CREEK further knew or should have known that it did not pay Mr. Mendez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, SILVER CREEK engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Mendez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SILVER CREEK did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SILVER CREEK did not pay other aggrieved employees at the correct rate of pay for premium wages because SILVER CREEK systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SILVER CREEK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mendez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SILVER CREEK regularly failed to authorize and permit Mr. Mendez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SILVER CREEK's policies and/or practices of utilizing labor budgets, resultant understaffing, and assigning of heavy workloads, prevented Mr. Mendez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SILVER CREEK also failed to adhere to a schedule of rest periods, which, coupled with SILVER CREEK's failure to provide adequate rest period coverage, further led to Mr. Mendez and other aggrieved employees not being authorized and permitted to take rest periods. SILVER CREEK also had a policy or practice of failing authorize and permit Mr. Mendez and other aggrieved employees to take third rest periods when they worked in excess of 10 hours in one day.

Additionally, during the relevant time period, SILVER CREEK maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Mendez and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Mendez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use rest periods freely for their own purposes. Thus, SILVER CREEK effectively maintained control over Mr. Mendez and other aggrieved employees during rest periods and/or caused them to perform work during rest periods.

As a result of SILVER CREEK's practices and policies, Mr. Mendez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Mendez missed his rest periods 4-5 days per week due to the heavy workload and the lack of coverage for rest periods.

SILVER CREEK also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Mendez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SILVER CREEK did pay other

aggrieved employees one (1) additional hour of premium pay for missed rest periods, SILVER CREEK did not pay other aggrieved employees at the correct rate of pay for premium wages because SILVER CREEK failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SILVER CREEK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mendez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines “recovery period” to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, SILVER CREEK violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because SILVER CREEK failed to provide Mr. Mendez and other aggrieved employees with recovery periods. For example, Mr. Mendez was not provided a shaded area for recovery and was not permitted to take recovery periods in a shaded area while working at the job site.

SILVER CREEK also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. Mendez and other aggrieved employees have not received premium pay for all missed recovery periods. Alternatively, to the extent that SILVER CREEK did pay other aggrieved employees for missed recovery periods, SILVER CREEK did not pay other aggrieved employees at the correct rate of pay, because SILVER CREEK systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SILVER CREEK failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mendez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SILVER CREEK has not provided Mr. Mendez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SILVER CREEK has knowingly and intentionally provided Mr. Mendez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SILVER CREEK issued uniform wage statements to Mr. Mendez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SILVER CREEK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SILVER CREEK did not record the time Mr. Mendez and other aggrieved employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and/or improperly rounded their total hours worked, SILVER CREEK did not list the correct amount of gross wages and net wages earned by Mr. Mendez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SILVER CREEK failed to accurately list the total number of hours worked by Mr. Mendez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because SILVER CREEK did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SILVER CREEK did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SILVER CREEK also failed to list the correct amount of net wages in violation of section 226(a)(5). SILVER CREEK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SILVER CREEK willfully failed to maintain accurate payroll records for Mr. Mendez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Mendez’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SILVER CREEK failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Mendez and other aggrieved employees, in violation of section 1198. As stated, SILVER CREEK engaged in a company-wide practice and/or policy of falsifying Mr. Mendez’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Mendez and other aggrieved employees. Furthermore, in light of SILVER CREEK’s failure to provide Mr. Mendez and other aggrieved employees with second 30-minute meal periods to which they were entitled, SILVER CREEK kept no records of meal start and end times for second meal periods.

Because SILVER CREEK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mendez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Mendez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Mendez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SILVER CREEK failed to pay Mr. Mendez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Mendez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

SILVER CREEK willfully failed to pay Mr. Mendez and other aggrieved employees who are no longer employed by SILVER CREEK all their earned wages, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SILVER CREEK's employment in violation of California Labor Code sections 201, 202, and 203.

Mr. Mendez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11010(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid 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 the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived

of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

SILVER CREEK violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because SILVER CREEK failed to pay Mr. Mendez and other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. SILVER CREEK had a company-wide practice of sending Mr. Mendez and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Mendez and other aggrieved employees for half of their scheduled shift. For example, on at least two (2) occasions, Mr. Mendez reported to work for his scheduled shift, but would be sent home early by SILVER CREEK’s management due to inclement weather. Although Mr. Mendez and other aggrieved employees reported to work based on the schedule that SILVER CREEK provided to them, SILVER CREEK would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Mendez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Mendez and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, SILVER CREEK, on a company-wide basis, required that Mr. Mendez and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Mendez and other aggrieved employees received work-related calls from their supervisors discussing their assignments with SILVER CREEK’s managers during shifts and off-the-clock. Although SILVER CREEK required Mr. Mendez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, SILVER CREEK failed to fully reimburse them for this cost.

Second, during the relevant time period, SILVER CREEK, on a company-wide basis, forced Mr. Mendez and other aggrieved employees to purchase their own supplies and tools, such as tool belts, hammers, a helmet, a toolbox, and measuring tape. For example, Mr. Mendez was required to spend approximately \$80.00 on a tool belt, \$100.00 on hammers, \$50.00 on a helmet, \$180.00 on a toolbox, and \$225.00 on tape measures in order to carry out his work-related duties. Although SILVER CREEK required Mr. Mendez and other aggrieved employees to purchase their own supplies and tools for use on the job, SILVER CREEK did not reimburse them for these expenses.

Third, SILVER CREEK, on a company-wide basis, mandated that Mr. Mendez and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Mr. Mendez and other aggrieved employees purchased steel-toed boots to wear inside SILVER CREEK's facilities and construction zones, but were not reimbursed fully for these costs.

SILVER CREEK could have provided Mr. Mendez and other aggrieved employees with the actual tools for use on the job, such as company phones, supplies and tools, and steel-toed boots to be used for fulfilling work-related tasks, or could have reimbursed employees for the costs of their cellular phone usage, supply and tool expenses, and boot expenses. Instead, SILVER CREEK passed these operating costs off onto Mr. Mendez and other aggrieved employees. At all relevant times, Mr. Mendez and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, SILVER CREEK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Mendez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

SILVER CREEK, on a company-wide basis, failed to provide Mr. Mendez and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that SILVER CREEK required employees to wear certain personal protective equipment, including steel-toed boots, SILVER CREEK failed to provide such reasonably necessary equipment to Mr. Mendez and other aggrieved employees to keep them safe.

SILVER CREEK's failure to provide Mr. Mendez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Mendez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

provided for in this section are in addition to any other civil or criminal penalty provided by law.” SILVER CREEK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mendez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mendez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Mendez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against SILVER CREEK for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Mendez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Mendez’s reasonable attempt to settle his dispute with SILVER CREEK prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SILVER CREEK of Mr. Mendez’s aforementioned grievances and the proposed remedies as detailed below, while affording SILVER CREEK a reasonable opportunity to satisfy Mr. Mendez’s demands.

Demand is hereby made that SILVER CREEK shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SILVER CREEK shall pay Mr. Mendez and all other aggrieved employees employed by SILVER CREEK at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SILVER CREEK shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked; provided lawful meal, rest, and recovery periods; and paid all reporting time pay.
3. SILVER CREEK shall conduct a survey or interview all current and former aggrieved employees in California who worked for SILVER CREEK in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; the number of recovery periods which were not provided; and the number of employees who were required to pay for cellular phone expenses, supply and tool expenses, boot expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SILVER CREEK shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. SILVER CREEK also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor

Code sections 226.7, 516, and 1198. Additionally, SILVER CREEK also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more recovery periods, as required by Labor Code sections 226.7, 516, and 1198.

5. SILVER CREEK shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for SILVER CREEK's benefit, including, but not limited to, cellular phone expenses, supply and tool expenses, boot expenses, or other expenditures, as required by Labor Code section 2802.
6. SILVER CREEK shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SILVER CREEK shall provide Mr. Mendez and all aggrieved employees employed by SILVER CREEK at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SILVER CREEK shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
9. SILVER CREEK shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. SILVER CREEK shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,



Michelle Kennedy

Copy: SILVER CREEK INDUSTRIES LLC (via U.S. Certified Mail); SILVER CREEK INDUSTRIES RS LLC (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

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SILVER CREEK INDUSTRIES LLC
2830 BARRETT AVENUE
PERRIS CA 92571



9590 9402 1512 5362 2523 07

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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3. Service Type

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| ☐ Adult Signature Required | \$ |
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Capstone

LAW APC

1875 Century Park East, Ste 1000
Los Angeles, CA 90067



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2830 BARRETT AVENUE
PERRIS CA 92571



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2. Article Number (Transfer from service label)

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9590 9402 1512 5362 2522 60

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- ☐ Agent
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B. Received by (Printed Name)

Mark Gastelum

C. Date of Delivery

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3. Service Type

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☐ Registered Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SILVER CREEK INDUSTRIES LLC
2830 BARRETT AVENUE
PERRIS CA 92571



9590 9402 1512 5362 2523 07

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7290

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Mark Gaston

C. Date of Delivery

12-30-20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted

Delivery

☐ Return Receipt for

Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation

Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt