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8 the general public as private  
9 attorney general

VENTURA  
SUPERIOR COURT  
**FILED**

FEB 19 2021

MICHAEL D. PLANET  
Executive Officer and Clerk  
BY: \_\_\_\_\_, Deputy

MARIANA SUAZO

6 **SUPERIOR COURT OF CALIFORNIA**  
7  
8 **FOR THE COUNTY OF VENTURA**

9 ADAM GUTIERREZ, individually, and on behalf  
10 of all other aggrieved employees,

11 Plaintiff,

12 vs.

13 THOMPCO INC., AND DORI DAWNE  
14 THOMPSON, AN INDIVIDUAL, AND DOES 1-  
15 20, INCLUSIVE,

16 Defendants.  
17  
18

CASE NO 56-2021-00550949-CU-OE-VTA

**PAGA REPRESENTATIVE ACTION  
COMPLAINT PURSUANT TO THE  
PRIVATE ATTORNEYS GENERAL ACT  
(LABOR CODE §§2698 *et seq*)**

19  
20 COMES NOW Plaintiff ADAM GUTIERREZ ("Plaintiff"), on behalf of the general public  
21 and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as  
22 private attorney general, and asserts claims against Defendants THOMPCO INC., a California  
23 corporation, DORI DAWNE THOMPSON, an individual, and Does 1-20, inclusive (collectively  
24 "Defendants") as follows:

25 **I. INTRODUCTION**

26 1. This is a representative action for recovery of penalties under the Private Attorneys  
27 General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698 *et seq*. PAGA permits "aggrieved  
28 employees" to bring a lawsuit as a representative action on behalf of the general public as private

1 attorney general and all other current and former aggrieved employees, to recover civil penalties and  
2 address an employer's violations of the California Labor Code.

3 2. In this case, Defendants violated various provisions of the California Labor Code. As  
4 set forth below, Defendants implemented policies and practices which led to unpaid wages resulting  
5 from Defendant's: (a) failure to accurately pay overtime wages, (b) failure to pay minimum wages  
6 (c) failure to provide meal periods and failure to pay an additional hour's of pay in lieu of providing  
7 a meal period; (d) failure to authorize and permit rest breaks for every four hours or major fraction  
8 thereof worked and failure to pay an additional hour's of pay in lieu of providing a rest period; (e)  
9 failure to pay all wages earned and owed upon separation from Defendant's employ; (f) failure to  
10 provide accurate itemized wage statements; (g) knowingly and intentionally failing to maintain  
11 accurate and complete records; and (h) failure to indemnify for necessary business expenses. As a  
12 result, Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as  
13 private attorney general and all other aggrieved employees.

## 14 II. JURISDICTION AND VENUE

15 3. The California Superior Court has jurisdiction over this action pursuant to  
16 California Constitution Article VI, Section 10, which grants the Superior Court "original  
17 jurisdiction in all cases except those given by statute to other trial courts." The statutes under which  
18 this action is brought do not give jurisdiction to any other court.

19 4. This Court has jurisdiction over Defendants because, upon information and belief,  
20 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally  
21 avails itself of the California market so as to render the exercise of jurisdiction over it by the  
22 California Courts consistent with traditional notions of fair play and substantial justice.

23 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil  
24 Procedure section 395. Defendants Thompco Inc., Dori Dawne Thompson, and Does 1 through 20,  
25 are operating and doing business in, California – Ventura County, and each Defendant is within the  
26 jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a  
27 direct effect on Plaintiff and all other aggrieved employees within the State of California and within  
28 Ventura County and elsewhere in California.

1           6.       On information and belief, Defendants have conducted business within the State of  
2 California during the purported liability period and continue to conduct business in the State of  
3 California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the similarly  
4 situated non-exempt aggrieved employees within Ventura County and, based on information and  
5 belief, Los Angeles County and the State of California.

6           7.       The California Superior Court also has jurisdiction in this matter because on  
7 information and belief there are no federal questions at issue, as the issues herein are based solely on  
8 California statutes and law, including the California Labor Code, the IWC Wage Orders, the  
9 California Code of Civil Procedure, the California Civil Code, and the California Business and  
10 Professions Code.

11          8.       On information and belief, during the statutory liability period and continuing to the  
12 present ("liability period"), Defendants consistently maintained and enforced against Defendants'  
13 Non-Exempt Employees ("Aggrieved Employees"), among others, the following unlawful practices  
14 and policies, in violation of California state wage and hour laws (a) failure to accurately pay overtime  
15 wages, (b) failure to pay minimum wages (c) failure to provide meal periods and failure to pay an  
16 additional hour's of pay in lieu of providing a meal period; (d) failure to authorize and permit rest  
17 breaks for every four hours or major fraction thereof worked and failure to pay an additional hour's  
18 of pay in lieu of providing a rest period; (e) failure to pay all wages earned and owed upon separation  
19 from Defendant's employ; (f) failure to provide accurate itemized wage statements; and knowingly  
20 or intentionally failing to maintain accurate and complete records; (g) failure to maintain all required  
21 records; and (h) failure to indemnify and/or reimburse for necessary business expenses.

22          9.       On information and belief, during the statutory liability period and continuing to the  
23 present, Defendants have had a consistent policy of failing to provide its Non-Exempt Employees  
24 within the State of California, including Plaintiff unfettered, uninterrupted, duty free rest periods of  
25 at least (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such  
26 employees one (1) hour of pay at the employees regular rate of compensation for each workday that  
27 the rest was untimely, interrupted and/or not provided, as required by California state wage and hour  
28 laws.

1           10.     On information and belief, during the statutory liability period and continuing to the  
2 present, Defendants have had a consistent policy of failing to pay overtime for hours worked in  
3 excess of forty hours in a workweek or more than 8 hours in a workday.

4           11.     On information and belief, during the statutory liability period and continuing to the  
5 present, Defendants have had a consistent policy of failing to pay minimum wages, overtime wages,  
6 and wages earned on a regular pay period for all hours worked while subject to the control of  
7 Defendants.

8           12.     On information and belief, during the statutory liability period and continuing to the  
9 present (rest and meal period liability period), Defendants have had a consistent policy of requiring  
10 its Non-Exempt Employees within the State of California, including Plaintiff, to work at least five  
11 (5) and or ten (10) hours without a meal period and failing to pay such employees one (1) hour of  
12 pay at the employee's regular rate of compensation for each workday that the meal period was  
13 untimely, interrupted and/or not provided, as required by California state wage and hour laws.

14           13.     On information and belief, as a result of these unlawful acts, Defendants failed to pay  
15 the required meal and rest period premiums on days such Non-Exempt Employees worked 3.5 hours,  
16 six hours, or more than ten hours in a work shift.

17           14.     On information and belief, during the statutory liability period and continuing to the  
18 present, Defendants have had a consistent policy of failing to timely pay wages upon separation.

19           15.     On information and belief, during the statutory liability period and continuing to the  
20 present, Defendants have had a consistent policy of failing to provide accurate itemized wage  
21 statements.

22           16.     On information and belief, during the statutory liability period and continuing to the  
23 present, Defendants have had a consistent policy of failing to indemnify work related expenses  
24 incurred.

25           17.     On information and belief, during the statutory liability period and continuing to the  
26 present, Defendants have had a consistent policy of knowingly and intentionally failing to maintain  
27 accurate and complete records.  
28

18. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees brings this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-203, 204, 218, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 2802, 2802(a) seeking penalties, interest, attorneys' fees and costs.

### III. PARTIES

### A. Plaintiff

19. Plaintiff ADAM GUTIERREZ is a resident of Oxnard, California, who was employed by Defendants in Ventura County, California, as a non-exempt employee within the last year preceding the filing of this action. Specifically, Plaintiff was employed as a hot oil truck driver which included operating a hot oil truck for the purpose of heating and circulating fluids. His job duties included carrying and laying out hoses and joints of pipes from the truck to the wellhead, checking gauges and valves, operating high-pressure pump and burner for the heating fluids, operating high-pressure pump to test integrity of the tubing and casing, and safely operating hot oil trucks to and from job sites, among other things. Plaintiff normally worked 8+ hours per day, over 40 hours per week and was on-call twenty-four hours a day, seven days a week.

22. As Defendants' employees, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- (a) work in excess of eight (8) hours per day, and/or forty (40) hours per week; all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders (“IWC”);
- (b) perform work subject to the control of the employer without being compensated at least minimum wages, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order (“IWC”);
- (c) work without being permitted or authorized a minimum ten-minute rest period for every four hours or major fraction thereof worked and not compensated one (1) hour of pay at his regular rate of compensation for each workday that a rest period

was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");

(d) work in excess of five hours per day without being provided meal periods and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");

(e) not paid all wages upon separation from Defendant's employment ("IWC");

(f) not reimbursed for business related expenses; and

(g) not provided accurate itemized wage statements.

23. Plaintiffs seek penalties under Labor Code 2698, et. seq. on behalf of the general public as private attorney general and all other aggrieved employees.

#### **B. Defendants**

24. On information and belief, Defendant THOMPCO INC. ("Thompco"), is a Nevada corporation operating in and authorized to conduct business in the State of California. Defendant provides oil-well maintenance services at various oil fields throughout Los Angeles and Ventura County, California and employs numerous non-exempt employees at each of these locations.

25. On information and belief, Defendant DORI DAWNE THOMPSON ("Dori"), is the Chief Executive Officer, Chief Financial Officer, and President of Defendant Thompco. Dori is sued herein pursuant to Labor Code Section 558.1. Based on information and belief, Plaintiff alleges that Dori was the owner and/or managing agent of Defendant Thompco who exercised control over the labor practices and day-to-day operations of Defendant Thompco, causing such Defendant to violate the state's wage and hours laws. As a result, Dori is personally liable for Defendant Thompco's wage and hour violations.

26. Based on information and belief, Defendants Dori and Thompco operate under a joint employer, co-employer, and/or principal/agency relationship such that they aided and helped cause the alleged violations. Defendants, and each of them, designed, drafted, implemented, controlled, monitored, maintained and enforced the labor and compensation policies and practices for all California locations; and engaged in a common course of conduct in violation of state and federal

1 law. As such, Plaintiff alleges based on information and belief that, Dori and Thompco are co-  
2 employers and/or joint employers.

3 27. Other than identified herein, Plaintiff is unaware of the true names, capacities,  
4 relationships and extent of participation in the conduct alleged herein, of the defendants sued as  
5 DOES 1 through 20, but is informed and believes and thereon alleges that said defendants are legally  
6 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such  
7 fictitious names. Plaintiff will amend this complaint when their true names and capabilities are  
8 ascertained.

9 28. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or  
10 indirectly, or through agents or other persons, employed Plaintiff and other members of the  
11 Representative Group, and exercised control over their wages, hours, and working conditions.  
12 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects  
13 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan  
14 or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
15 other defendants.

#### 16 IV. GENERAL ALLEGATIONS

17 29. Plaintiff is informed and believes, and based thereon alleges that Defendants employ  
18 or employed Non-Exempt Employees in Los Angeles and Ventura County, State of California during  
19 the liability period. Plaintiff and all other aggrieved employees were compensated based upon an  
20 hourly rate and have at all times pertinent hereto been non-exempt within the meaning of the  
21 California Labor Code and the implementing rules and regulations of the IWC California Wage  
22 Orders.

23 30. On information and belief, and during the relevant time frame, all aggrieved  
24 employees are residents of California and citizens of the United States.

25 31. On information and belief, Defendant Thompco is involved in the oil-well business  
26 including the maintenance of oil-wells at multiple oil-well fields located throughout Los Angeles  
27 and Ventura County. Thompco owns and operates several trucks including hot oil trucks, bobcats,  
28 and tractor trailers which provide well maintenance including the vacuuming and heating of oil to

1 properly maintain the wells. In addition, Thompco provides maintenance and repair work on the oil  
2 pumps, rods and equipment necessary to keep the wells functioning properly. Plaintiff was employed  
3 as a non-exempt hot oil truck driver for Defendants and was primarily responsible for heating the oil  
4 pulled from the wells to dissolve the paraffin wax, and then putting it back into the wells.

5 32. Plaintiff typically worked between 8 to 12 hours a day and was on-call 24 hours a  
6 day, seven days a week. Plaintiff did not have a regular weekly work schedule. On the days that  
7 he did work, he normally received a telephone call the night before from Thompco Dispatch  
8 instructing him to report to work the following day. If he didn't receive a telephone call, the  
9 assumption was that he was not scheduled to work the following day. Nonetheless, he was told  
10 that he was on-call and to be prepared to report to work on a moment's notice. In fact, there were  
11 some days in which Plaintiff received a telephone call the morning of and/or afternoon, instead of  
12 the night before, instructing him to report to work immediately.

13 33. Although Plaintiff did not work every day of the week or have a regular weekly  
14 schedule, management told him and other similarly situated non-exempt, aggrieved employees that  
15 they were always "on-call" and that it was a "24/7 job" even though they were only compensated  
16 for the time they actually spent working at the oil fields. Plaintiff was terminated on or about June  
17 12, 2020 after missing two telephone calls to report to work on consecutive days.

18 34. Throughout Plaintiff's employment with Defendants, Plaintiff was not exempt from  
19 the Employment Laws and Regulations, in that he routinely spent a majority of his working hours  
20 performing duties delegated to non-exempt employees including, but not limited to, operating a hot  
21 oil truck for the purpose of heating and circulating fluids. His job duties included carrying and  
22 laying out hoses and joints of pipes from the truck to the wellhead, checking gauges and valves,  
23 operating high-pressure pump and burner for the heating fluids, operating high-pressure pump to  
24 test integrity of the tubing and casing, and safely operating hot oil truck to and from job sites, among  
25 other things.

26 35. Throughout Plaintiff's entire employment with Defendants, Plaintiff spent few to  
27 none of his working hours performing work that was primarily intellectual, managerial or creative,  
28

1 or work that required the regular and customary exercise of discretion and independent judgment  
2 with respect to matters of significance on more than an occasional basis.

3 36. During Plaintiff's employment with Defendants, Plaintiff was either required to  
4 work through mandatory meal and rest breaks, or was often times interrupted during his meal and  
5 rest breaks resulting in shortened meal and rest breaks. Additionally, Plaintiff was often not  
6 provided with or allowed to take his mandatory meal break within the first five hours of work  
7 because he was busy heating oil and/or doing well maintenance work at the oil fields. Further, on  
8 days that Plaintiff worked more than 10 hours a day, he was either not provided with a mandatory  
9 second meal period, required to work through his second meal period or was often interrupted  
10 during his second meal period. In addition, Plaintiff was often not provided with a second meal  
11 period before the end of the 10<sup>th</sup> hour of work. On information and belief, Plaintiff and other  
12 similarly situated employees were not paid for their missed meal and/or rest breaks with one hour  
13 of premium pay at the regular rate of pay.

14 37. During Plaintiff's employment with Defendants, Plaintiff was regularly required to  
15 work over 8 hours in one day, and/or over 40 hours in one week. On information and belief,  
16 Plaintiff and other similarly situated employees were not paid for all overtime or double time  
17 worked.

18 38. When Plaintiff was not scheduled to work, he was told that he was "on-call" and to  
19 be ready to report to work if he received a call from dispatch regardless of the day of week or time  
20 of day. If Plaintiff received a call during the middle of the day no matter what he was doing, he  
21 was supposed to report to work immediately after being called. Even on days that Plaintiff was  
22 scheduled to be off, he was still required to keep his telephone on his person at all times in case he  
23 received a call from dispatch. As a result, Defendants' controlled what Plaintiff could and could  
24 not do on the days he was not scheduled to work by restricting his activities and requiring him to  
25 report to work immediately upon receiving a call from dispatch. Plaintiff was not compensated for  
26 his "on-call" status.

1           39.     Upon information and belief, Defendants regularly failed to pay Plaintiff and other  
2 non-exempt employees for all hours worked including minimum wage, overtime and double time  
3 pay.

4           40.     As a consequence, Plaintiff and other similarly situated non-exempt employees,  
5 were not paid all wages upon termination and were not provided accurate wage statements.

6           41.     Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were not  
7 compensated for all hours/time worked as Defendants would regularly suffer and permit Plaintiff  
8 and Aggrieved Employees to work off the clock (e.g. “on-call” status), but Plaintiff and Aggrieved  
9 Employees were not compensated for hours worked off the clock or while “on-call”. For example,  
10 Defendants did not compensate Plaintiff and Aggrieved Employees while they were required to be  
11 “on-call” 24/7 days a week. This policy resulted in Plaintiffs and Aggrieved Employees being  
12 subjected to Defendants’ unlawful policy of not compensating Plaintiffs and Aggrieved Employees  
13 for all hours worked including overtime and double-time while under the control of Defendants.  
14 Defendants’ unlawful off-the-clock policy over time resulted in a large and disproportionate  
15 underpayment of wages including overtime wages to Plaintiff and Aggrieved Employees.

16           42.     Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were  
17 caused to endure unprovided, untimely, interrupted meal periods of at least thirty (30) minutes for  
18 many of the work days such employees worked more than six hours (6) hours, were not provided  
19 uninterrupted second meal periods of at least thirty (30) minutes for any work days such employees  
20 worked more than ten (10) hours, and were not paid one (1) hour of wages by Defendants in lieu  
21 thereof, all in violation of the California Labor Code.

22           43.     Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were  
23 regularly required to work in excess of six (6) hours per day without Defendants providing them a  
24 timely, uninterrupted (30) minute meal period as mandated under the California Labor Code and the  
25 implementing rules and regulations of the IWC California Wage Orders as Plaintiff and Aggrieved  
26 Employees were required to take shortened meal periods or not at all because the hot oil/well  
27 maintenance work they performed, once commenced, could not be interrupted because paraffin wax  
28 would build up and clog the wells. Accordingly, Plaintiff and Aggrieved Employees were not

provided lawful meal periods and were not provided with one hour of wages in lieu thereof under Defendants' policies and practices, which included work schedules placed upon the Aggrieved Employees from Defendants' management and supervisors to perform work at the expense of their meal periods and Defendants' implementation of work schedules and workload requirements that denied Aggrieved Employees all of their authorized meal periods, including second meal periods on shifts when they worked over ten (10) hours in a day. Plaintiff and the Aggrieved employees did not waive any of their authorized and required meal periods, nor did they receive one hour of regular pay for each day Defendants failed to provide a lawful meal period.

44. Plaintiff is informed and believes that during the liability period, Plaintiff and Aggrieved Employees were consistently required to work in excess of four (4) hours (or major fraction thereof) without receiving lawful ten (10) minute rest periods. On information and belief, Defendants' management would push Plaintiff and Aggrieved Employees to stay at their work stations until their work was completed, and as a result would often have to take their breaks late or be forced to skip their breaks. The Aggrieved Employees were also not provided with one hour wages in lieu thereof. Defendants' policies and practices included Defendants' implementation of a work schedule and workload requirements that denied and failed to provide the Aggrieved Employees all of their authorized rest periods, including first rest periods of at least ten (10) minutes for every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and second rest period of at least ten (10) minutes for every shift worked greater than six (6) hours, and a third rest period of at least ten (10) minutes for every shift worked in excess of ten (10) hours.

45. Defendants did not fully compensate Plaintiff and the Aggrieved Employees for hourly wages during the liability period, including by virtue of the fact that Defendants did not compensate Plaintiff and Aggrieved Employees with one extra hour of pay for Defendants' failure to provide such Non-Exempt Employees with each of their authorized rest periods and meal periods during the rest and meal period liability period.

46. On information and belief, Defendants also failed to accurately pay minimum wage and overtime pay owed to Plaintiff and Aggrieved Employees by failing to compensate them for Defendants' "on-call" and "standby time" policy, and hours worked over eight hours in a workday

1 or over 40 hours in the workweek at one and one-half times the Aggrieved Employees regular rate  
2 of pay. In addition, on information and belief, Defendants also failed to accurately pay double-time  
3 wages to Plaintiff and Aggrieved Employees by failing to compensate them for all hours worked in  
4 excess of 12 hours in a workday or in excess of 8 hours on the 7<sup>th</sup> consecutive workday in a  
5 workweek.

6 47. Upon information and belief, Defendants failed to provide accurate itemized wage  
7 statements to Plaintiff and Aggrieved Employees as the wage statements provided failed to  
8 accurately account for all hours worked. Further, Defendants failed to provide accurate wage  
9 statements as Defendants' wage statements do not identify premium pay as required by Labor Code  
10 § 226.

11 48. Upon information and belief, Defendants failed to reimburse and/or indemnify  
12 Plaintiff and Aggrieved Employees for all necessary expenditures incurred in adherence to  
13 Defendants "uniform policy"; and

14 49. Upon information and belief, Defendants failed to keep accurate records pursuant to  
15 Labor Code § 1174.5.

16 50. Upon information and belief, Defendants knew and or should have known that it is  
17 improper to implement policies and commit unlawful acts such as:

- 18 (a) requiring employees to work over eight (8) hours in a day and forty (40)  
19 hours in a work week without being provided the required overtime pay;
- 20 (b) requiring employees to perform work subject to the control of the Defendant  
21 without being compensated at least minimum wages;
- 22 (c) requiring employees to work four (4) hours or a major fraction thereof  
23 without being provided a minimum ten (10) minute rest period and without  
24 compensating the employees with one (1) hour of pay at the employees'  
25 regular rate of compensation for each workday that a rest period was not  
26 provided;
- 27 (d) requiring employees to work in excess of five (5) hours or ten (10) hours per  
28 day without being provided an uninterrupted thirty- minute meal period

and/or a second meal period, and without compensating employees with one (1) hour of pay at the regular rate of compensation for each workday that such a meal period was not provided;

(e) requiring employees to be “on-call” or “standby” 24/7 without compensation;

(f) requiring employees to incur necessary business expenses without indemnification and/or reimbursement;

(g) failing to pay all wages earned during the regular pay period;

(h) failing to pay all wages earned upon separation from Defendants’ employ; and

(i) failing to provide accurate itemized wage statements.

51. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

## V. REPRESENTATIVE CLAIMS

### THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.*

52. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

53. On or about December 7, 2020, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the submission to LWDA is attached hereto as **Exhibit A**. A copy of Plaintiff’s letter to Defendants indicating that they were put on notice of the claims alleged here and that the notice requirement has been satisfied is attached as **Exhibit B**. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

1           54. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff  
2 brings this cause of action on behalf the general public and all non-exempt aggrieved employees,  
3 acting on behalf of the California Attorney General as private attorney general.

4           55. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties due  
5 and owing for which Defendants are liable due to numerous Labor Code violations as set forth in  
6 this Complaint, including without limitation Labor Code section 201-203, 204, 218, 218.5, 218.6,  
7 226, 266.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2802, 2802(a) and 2698  
8 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et*  
9 *seq.*

10          56. At all times relevant, Plaintiff and all other aggrieved employees regularly  
11 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and  
12 rest break requirements of the applicable IWC wage order and the Labor Code.

13          57. Defendants violated Labor Code sections 510, 558, and 1194 by failing to accurately  
14 pay overtime wages as discussed above due to Defendants' unlawful off the clock and 24/7 policy  
15 and failure to pay all hours worked in excess of eight hours in a day and/or 40 hours in a workweek.  
16 Therefore, Defendants violated section 510, 558 and 1194 by not compensating its Non- Exempt  
17 Employees for work performed in excess of eight hours (8) in a day or forty hours in a work week  
18 (40). Section 510 of the Labor Code codifies the right to overtime compensation at the rate of one  
19 and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day  
20 or forty (40) hours in a work week and to overtime compensation twice the regular rate of pay for  
21 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the  
22 seventh day of work in a particular work week.

23          58. Defendants also violated Labor Codes sections 200, 1194, and 1197 for failing to pay  
24 minimum wages as described above. Labor Code §1197 provides that employees are to be paid  
25 minimum wage for each hour worked, including "on-call" and/or "standby" time, and cannot be  
26 averaged and/or payment of a lesser wage than the established is unlawful.

27          59. Defendants violated Labor Code sections 512 and 226.7 for failing to provide timely,  
28 uninterrupted meal periods and requiring unlawful on duty meal periods, or compensation in lieu

1       thereof. Pursuant to Labor Code section 512, no employer shall employ an employee for a work  
2       period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes  
3       in which the employee is relieved of all of his or her duties. An employer may not employ an  
4       employee for a work period of more than ten (10) hours per day without providing the employee  
5       with a second meal period of not less than thirty (30) minutes, except that if the total hours worked  
6       is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the  
7       employer and the employee only if the first meal period was not waived.

8               60.     Defendants failed to provide Plaintiff and all other aggrieved employees  
9       uninterrupted duty free first meal periods of not less than thirty (30) minutes. Defendants  
10      implemented and enforced policies of on duty meal period practices which required employees to  
11      work during their meal periods, to forego their meal periods, and/or to return to work from meal  
12      periods prior to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned  
13      violations, Plaintiff and all other Aggrieved Employees have been damaged in an amount according  
14      to proof at time of trial.

15             61.     Plaintiff, and on information and belief, all aggrieved employees, were systematically  
16      not permitted or authorized to take one ten-minute rest period for every four hours worked or major  
17      fraction thereof, which is a violation of the Labor Code and IWC wage order 4-2001, section 12. On  
18      shifts where Plaintiff and aggrieved employees worked in excess of three and a half hours, they were  
19      routinely not permitted or authorized to take lawful rest periods. Plaintiff, and on information and  
20      belief, aggrieved employees, were not compensated with one hour of wages for every day in which  
21      a rest period was missed, untimely or cut short as a result of Defendants' policies, practices, or work  
22      demands. By failing to authorize and permit a ten-minute rest period for every four hours or major  
23      fraction thereof worked per day, and by failing to provide compensation for such unprovided rest  
24      periods as alleged above, Defendants willfully violated the provisions of Labor Code sections 226.7,  
25      512 and the applicable IWC Wage Order.

26             62.     Plaintiff, and on information and belief, all aggrieved employees, were required to  
27      purchase certain clothing items consistent with adherence to Defendants' "uniform policy" for which  
28

1 they were not reimbursed. By failure to reimburse and/or indemnify as alleged above, Defendants  
2 willfully violated the provisions of Labor Code section 2802.

3 63. On information and belief, Defendants failed to provide accurate itemized wage  
4 statements pursuant to Labor Code section 226 which failed to include, all hours worked, including  
5 off the clock, overtime and the accurate overtime rate, and the lawful meal and rest period premiums  
6 earned, which are due and owing to Plaintiff and the aggrieved employees. As a result, Plaintiff and  
7 Aggrieved Employees were harmed as they are unable to determine if they were appropriately  
8 compensated for all hours worked.

9 64. On information and belief, Defendants failed to maintain accurate records as required  
10 by Labor Code section 1174.5.

11 65. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are  
12 entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

13 66. Plaintiff and the Representative Aggrieved Employees are entitled to recover  
14 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 17 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 18 2. For reasonable attorneys' fees and costs; and
- 19 3. For such other and further relief as the Court deems proper.
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**DEMAND FOR JURY TRIAL**

Plaintiff and Aggrieved Employees request a jury trial in this matter.

Dated: February 17, 2021

**MAKAREM & ASSOCIATES, APLC**

By: *Cameron Stewart*  
Ronald W. Makarem  
Cameron A. Stewart  
Attorneys for Plaintiff, individually  
and on behalf of all other aggrieved  
employees

# EXHIBIT A



Ronald W. Makarem  
Cameron A. Stewart  
Samuel Almon  
Jared Walder  
Rebecca Claudat  
Alexis Hames

*December 7, 2020*

**FILED ONLINE WITH THE LWDA**

ATTN: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Adam Gutierrez, et al. v. Thompco Inc., and Dori Dawne Thompson*  
Notice of Labor Code Violations Pursuant to Labor Code section 2699.3(a)(1)

Dear PAGA Administrator:

This letter shall constitute the required written notification under Labor Code section 2699.3(a)(1) of Labor Code violations alleged against **Thompco Inc., and Dori Dawne Thompson** ("Employer"). Our clients, **Adam Gutierrez and other similarly situated aggrieved employees** (together, "Claimants"), worked as non-exempt employees for Employer. Claimants hereby issue this Notice to both the LWDA and Employer in compliance with the notice requirements of Labor Code section 2699.3(a)(1).

Claimants hereby give Notice of the following specific provisions of the Labor Code that have been violated and the facts and theories to support the alleged violations:

| <b>Violation</b>                                  | <b>Facts and Theories</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| Labor Code sections 204, 218, 218.5, 218.6 & 1194 | <p>Labor Code section 204 provides that covered employees are entitled to receive all wages earned for the pay period corresponding to the payday.</p> <p>Here, Employer regularly failed to pay Claimants all wages earned for labor performed each pay period including minimum wage and overtime pay. For example, Employer regularly suffered or permitted Claimants to work off the clock, but Claimants were not compensated for hours worked off the clock. Among other things, Employer did not compensate employees for time spent "on-call". Claimants were on-call 24/7 except for scheduled days off. Claimants were not compensated while they were on-call even though they were under the direction and control of their Employer and required to report for duty immediately upon receiving a telephone call from dispatch. Employer also failed to provide the requisite one hour of pay at the regular rate of compensation for shifts with non-compliant meal periods. Accordingly,</p> |

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|                                   | Employer violated the above code sections.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Labor Code section 1194           | <p>Labor Code section 1194 provides: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”</p> <p>Here, Employer failed to pay Claimants their earned minimum and/or overtime wages for all hours worked. For example, Employer regularly required Claimants to work off the clock, and they were on-call 24/7 when not on a scheduled day off for which they were not paid minimum wage and/or overtime pay.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Labor Code sections 510 and 1194  | <p>Labor Code section 510 states: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”</p> <p>Labor Code section 1194 provides “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”</p> <p>Here, Claimants worked in excess of eight hours in one workday and/or in excess of 40 hours in one workweek, and were not compensated with overtime pay. As a result of this practice, Labor Code sections 510 and 1194 were violated.</p> <p>For example, Employer suffered or permitted Claimants to work off the clock, including by not compensating employees for time spent “on-call” which caused Claimants to incur overtime and doubletime for which they were not compensated. Employer neither compensated Claimants for such work nor counted the time spent working off the clock or while “on-call” for purposes of calculating overtime. As a result of this practice, Labor Code sections 510 and 1194 were violated.</p> |
| Labor Code Sections 226.7 and 512 | <p>Labor Code Sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Under these provisions, a first meal period is required no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee’s 10th hour or work. If an employer fails to</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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|                          | <p>provide an employee meal periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.</p> <p>Here, Claimants sometimes worked in excess of five hours per shift and did not receive compliant and timely thirty-minute meal periods. For example, sometimes Claimants were not allowed to take their meal period or were required to take it after the fifth hour of the workday, or required to take shortened or irregular meal periods. Claimants were not compensated with an hour of pay at their regular rate of pay for shifts when their meal periods were not taken or taken late. Claimants were also regularly required to take meal periods of less than 30 minutes. For example, Claimants were often required to take meal periods of less than 30 minutes in order to meet certain deadlines. Accordingly, Employer violated these code sections. Additionally, Employer failed to pay Claimants for one (1) hour of pay at their regular rate of compensation for each non-compliant meal period.</p> |
| Labor Code section 226.7 | <p>Labor Code section 226.7 provides that employers shall authorize and permit employees to take rest periods at the rate of (10) minutes net rest time per four (4) hours of work, or major fraction thereof. This means that an employer must provide 10 minutes net rest time for each four-hour period worked by employees. If an employer fails to provide an employee rest periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.</p> <p>Here, Employer did not comply with these rest period provisions, as Employer routinely failed to authorize and permit Claimants to take their ten (10) minute rest periods for each four (4) hours, or major fraction thereof, they had worked. For example, Claimants routinely performed four consecutive hours of work without receiving a ten-minute rest period. Employer also failed to pay Claimants for one (1) hour of pay at their regular rate of compensation for each day on which Claimants did not receive one or more compliant rest periods.</p>   |
| Labor Code Section 226   | <p>Labor Code Section 226 provides: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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|                                                | <p>the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”</p> <p>Here, Employer failed to provide compliant wage statements because they failed to reflect all compensable hours Claimants worked, including time spent doing off-the-clock work and being “on-call”. As another example, Employer failed to provide compliant wage statements because the wage statements failed to list meal period and rest break premiums that were owed for shifts with non-compliant meal periods and/or meal breaks.</p> |
| Labor Code section 226, 1174, and 1174.5       | <p>Labor Code section 1174 provides that employers shall keep payroll records showing the hours worked and wages paid to each employee. These records are to be kept in accordance with rules established by the commission, but must be kept on file for a minimum of three (3) years.</p> <p>Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”</p> <p>Here, as a result of the aforementioned practices, <i>i.e.</i>, Employer suffering or permitting Claimants to work off the clock, including failing to compensate Claimants while on-call, failing to pay all overtime wages due, and failing to authorize and permit compliant meal and rest periods, Employer knowingly and intentionally failed to maintain records, including but not limited to: all hours worked by Claimants, meal periods taken, rest periods taken, and accurate itemized wage statements.</p>                                                                                                                |
| Labor Code Sections 201, 202, and 203, 2802(a) | <p>Labor Code Section 201 states that if an employer discharges an employee, earned but unpaid wages at the time of discharge are due and payable immediately. Similarly, Labor Code Section 202 provides “[i]f</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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|  | <p>an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Under section 203, if an employer willfully fails to pay in accordance with sections 201 or 202, any wages of an employee who is discharged or quits shall continue as a penalty.</p> <p>Here, Employer failed to pay all earned wages, including wages for time spent on-call and working off the clock, unpaid overtime, and wages for non-compliant meal periods to employees who quit or were discharged, in violation of Sections 201 and 202. Nor has Employer paid any of the continuation wages under Section 203.</p> <p>In addition, Claimants were required to use their personal cell phones to stay in contact with Employer when they were on-call 24/7 as a condition of their employment and were not reimbursed for necessary expenses and expenditures related thereto.</p> |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Please notify us within the required time period whether or not the Labor and Workforce Development Agency intends to investigate these alleged violations. If notice is not received within 65 calendar days of the postmark date of this letter, we will proceed with a civil action for penalties pursuant to Labor Code Section 2699. This civil action will be pursued on behalf of Claimants. Please send the Notice to our office located at 11601 Wilshire Blvd., Suite 2440, Los Angeles, California 90025.

Thank you for your attention to this matter.

Respectfully,

MAKAREM & ASSOCIATES, APLC

By: Cameron A. Stewart  
Cameron A. Stewart

# EXHIBIT B



**MAKAREM**  
**& ASSOCIATES**  
*Attorneys At Law*

Ronald W. Makarem  
Cameron A. Stewart  
Samuel Almon  
Jared Walder  
Rebecca Claudat  
Alexis Hames

*December 9, 2020*

Sent Via Certified Mail  
Dori Dawne Thompson,  
Agent for Service of Process  
Thompco, Inc.  
899 Mission Rock Road  
Santa Paula, CA 93060

**Re: Adam Gutierrez, *et al.* v. Thompco, Inc.**

Dear Ms. Thompson:

This firm represents Adam Gutierrez (“Gutierrez”) in connection with his claims that Thompco, Inc. and Dori Dawne Thompson (“Thompson”) violated numerous provisions of the California Labor Code in connection with his employment. Among the violations alleged (and as described in the attached letter to the LWDA) are that Thompson and Thompco, Inc. failed to pay all wages owed including failure to pay minimum wage, overtime, and doubletime pay to Gutierrez and other non-exempt aggrieved employees (“Claimants”), failed to provide compliant 30-minute meal periods to its non-exempt employees within the first five hours of their work, failed to authorize and permit its non-exempt employees to take compliant ten-minute rest breaks and/or to pay one hour of premium pay for non-compliant meal and rest breaks, failed to furnish compliant wage statements, failed to maintain required records, and failed to pay earned and unpaid wages upon discharge. In addition, Thompson and Thompco, Inc. failed to pay Claimants for off-the-clock work and for being “on-call” 24/7, failed to pay all wages earned and owned per pay period, failed to reimburse and/or indemnify Claimants for all business expenses/expenditures incurred as a result of Thompson’s and Thompco, Inc.’s policy requiring that its non-exempt employees use their personal cellular telephones for company business, among other things. Based on these violations, it is our client’s intention to file a class and representative action against Thompson and Thompco Inc. seeking to recover, *inter alia*, statutory penalties, and attorney fees. In conjunction with that intention, we have enclosed the letter that we have submitted to the California Labor and Workforce Development Agency, as is required under Labor Code section 2699.3(a)(1) prior to filing an action under the Private Attorneys General Act (“PAGA”).

We hereby demand that Thompson and Thompco, Inc. immediately act to rectify the various violations described above and in the accompanying letter to the LWDA, including, without limitation, paying all current and former employees wages for all hours worked (including time spent working off the clock and being “on-call” pursuant to Thompson’s and Thompco, Inc.’s policy of being on-call 24/7), unpaid minimum wages, unpaid overtime and doubletime wages, meal and rest period premiums in the amount of one hour of pay at the employees’ regular rate of pay for each day with a non-compliant meal and/or

rest period, plus all penalties and interest. We further demand that Thompson and Thompco, Inc. immediately correct its non-compliant policies and procedures relating to the above described Labor Code violations. If Thompson and Thompco, Inc. do not immediately act to rectify these violations, our client will have no alternative but to file a class and representative action against Thompson and Thompco, Inc.

Please feel free to contact me if you would like to discuss any of these issues.

Sincerely,

*Cameron A. Stewart*

Cameron A. Stewart

**Enclosures**