

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL
HON. JOHN M. TRUE, III (RET.)

JAVIER ALVIZURI HERNANDEZ,
ALVARO JOSE CARDENAS ,
FRANCISCO HERNANDEZ,
JOSE ANGEL CASTELLANOS CORTEZ ,
MIGUEL ANGEL RAMIREZ RAMIREZ ,
MIGUEL MONJARAZ, and
JOSE VILLANUEVA,

“Group II” Claimants,

and

PACIFIC PLUMBING AND SEWER
SERVICE, INC., MARLEINE BECHWATI
and JOSEPH GEORGE BECHWATI,

Respondents.

Case Nos:

01-21-0004-4448
01-21-0004-4467
01-21-0004-4475
01-21-0004-4483
01-21-0004-4487
01-21-0004-4490

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL ARBITRATION
AWARD (Group II)

INTRODUCTION

The undersigned, having been appointed pursuant to the agreement of the parties, and having been duly sworn, hereby makes the following Final Arbitration Award in the matters captioned above. These cases constitute a segment of an underlying American Arbitration Association (“AAA”) case styled *Gustavo Martinez, et al. v. Pacific Plumbing & Sewer Service, Inc., Marleine Bechwati and Joseph Bechwati* involving ten individuals who have made a variety of employment claims against their former employer, Pacific Plumbing & Sewer Service, Inc. and its owners. Pursuant to an agreement among the parties, and as more fully discussed below, two AAA arbitrators have been appointed for the purpose of conducting Evidentiary Hearings on the ten Claimants’ demands:

Group I Claimants

Arbitrator Janice G. Sperow, who has been designated by the parties as the “Case

Manager Arbitrator,” has conducted an Evidentiary Hearing involving three individuals who have been designated the “Group I” Claimants. They are: Kevin Oswaldo Perez Alvarez, Gustavo Martinez and Carlos Geraldo Martinez.

Group II Claimants

Commencing at 9:00 am PDT on Monday, November 7, 2022 and continuing on November 9-11 and 17, 2022, the undersigned arbitrator conducted a video conference Evidentiary Hearing involving the seven individuals designated as the “Group II” Claimants.

APPEARANCES

The Group II Claimants were represented by Tomas Margain, Esq. and the Justice At Work Law Group. Respondents Pacific Plumbing & Sewer Service, Inc., Marleine Bechwati and Joseph Bechwati (collectively, “Respondents”) appeared through Elizabeth Pappy and Susan Arduengo, Esqs. and Burke Williams & Stevenson, LLP.

PARTIES

The Group II Claimants are: Javier Alvizuri Hernandez, Alvaro Jose Cardenas, Francisco Hernandez, Jose Angel Castellanos Cortez, Miguel Angel Ramirez Ramirez, Miguel Monjaraz, and Jose Villanueva (collectively, “Group II Claimants”). The Claimants in Group II (like those in Group I) were employed as construction workers by Respondents at various times. Respondent Pacific Plumbing and Sewer Service, Inc. (“Pacific Plumbing”) is a plumbing and construction company located in Milpitas, California. Pacific Plumbing was founded by Respondent Joseph Bechwati. Marleine Bechwati, Joseph’s spouse, is a co-owner of Pacific Plumbing. Both individual Respondents have been dismissed from these proceedings. *See*, Joint Stipulations of Fact (Set Three), Stipulation No. 39.

JURISDICTION

1. Agreements to Arbitrate

On the dates set forth below, all but one of the Group II Claimants appear to have entered into a “Mutual Agreement To Arbitrate Claims” (“Agreement”) with Respondents:

Claimant	Dates
Miguel Monjarez (“Monjarez”)	01-06-2020
Alvaro Jose Cardenas (“Cardenas”)	01-02-2014 and 02-18-19
Javier Alvizuri Hernandez (“Alvizuri”)	03-15-2019
Francisco Hernandez (“Hernandez”)	none in record
Miguel Angel Ramirez Ramirez (“Ramirez”)	10-01-2018
Jose Castellanos Cortez (“Castellanos”)	09-24-2020
Jose Villanueva (“Villanueva”)	01-06-2020

(See, Respondent’s Exhibits 1 – 8.)¹ All of the Agreements are in English, with the exception of that executed by Jose Castellanos on September 24, 2020, which is in Spanish. (Rs. Ex. 6 at pp. 2-5.)

Each Agreement states in pertinent part:

This Mutual Agreement to Arbitrate Claims (the "Agreement") is entered into by and between Pacific Plumbing and Sewer Service, Inc. dba Pacific Plumbing & Underground Construction ("Employer") and [name] ("Employee"), effective on the date executed below.

Claims Covered By this Agreement

Employee and Employer agree to resolution by arbitration of all claims or controversies arising out of Employee's employment or its termination ("Claims") that either may have against the other, or any of their officers, directors, shareholders, members, representatives, attorneys, agents, or assigns in their capacity as such or otherwise, except that any claims Employee may have for workers' compensation, state unemployment compensation, or state disability insurance are not covered by this Agreement.

Any Claims shall be brought in the party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.

The parties understand that, by this Agreement, they are waiving their rights to have a Claim adjudicated by a court or jury.

¹ Hearing Exhibits are referred to hereafter as “Rs. Ex. __” and “Cl. Ex. __.”

The parties further understand and agree that they are waiving their right to be a party or class member in any purported class or representative proceeding alleging any Claims.

(*Id.*)

2. Superior Court Litigation

a. The Underlying Action

On January 5, 2021, certain Claimants filed a class action complaint in the Superior Court of California for the County of Santa Clara. In due course, the complaint was dismissed without prejudice based on the above-mentioned Agreements. (*See*, Sperow Award at p. 3.)

b. The PAGA Action

On April 8, 2021, Claimant Gustavo Martinez (Group I) filed a separate civil action against Respondents in the Santa Clara County Superior Court, docketed as *Gustavo Martinez v. Pacific Plumbing & Sewer Service, Inc., Marleine Bechwati and Joseph Bechwati*, Case No. 21 CIV 381781 (the “PAGA Action.”) (Cl. Ex. 13.) A First Amended Complaint in the PAGA Action was filed on May 17, 2021 adding Alvizuri as a plaintiff. (Cl. Ex. 14.)

As an Eighth Cause of Action, Martinez and Alvizuri assert a claim based on the California Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2699, *et seq.* This litigation has also been dismissed without prejudice in favor of these arbitration proceedings. The parties stipulated to have Respondents’ demurrer to the PAGA claim (originally filed in Superior Court) heard and decided by the undersigned. (*See*, Stipulations Re: PAGA Claim, dated October 19, 2022.)

3. Arbitration Demands

On various dates in 2021 and 2022, counsel for Claimants filed Demands For Arbitration under the Employment Arbitration Rules of the AAA. Attached to each Demand is an individual Complaint For Damages and Equitable Relief. Each Group II Claimant’s AAA case number, name and filing date is set forth below:

Case Number	Group Two Claimant	Date
01-21-0004-4448	Javier Alvizuri Hernandez	05-23-2021
01-21-0004-4475	Francisco Hernandez	05-23-2021
01-21-0004-4483	Jose Angel Castellanos Cortez	05-23-2021
01-21-0004-4487	Miguel Angel Ramirez Ramirez	05-23-2021
01-21-0004-4467	Alvaro Jose Cardenas	05-24-2021
01-21-0004-4490	Miguel Monjarez	06-21-2021
01-21-0004-4448	Jose Villanueva	02-09-2022

4. Selection of The Undersigned

In or about November 2021, and as more fully discussed below, the undersigned was selected by the parties to arbitrate the claims made by the Group II Claimants, and these proceedings followed.

PROCEDURAL HISTORY AND PRIOR RULINGS

1. Arbitrator Appointment, Global Case Management and Case Distribution

As noted above, the parties agreed to use two arbitrators to adjudicate all cases. The parties stipulated that Arbitrator Sperow would serve as the Case Manager Arbitrator and have the authority and jurisdiction to oversee all discovery, pre-hearing proceedings and post-hearing proceedings (including the adjudication of any applications for attorneys' fees and costs for all cases). In addition, the parties requested that the Case Manager Arbitrator adjudicate three of the cases (Group I), and that the undersigned arbitrator adjudicate the remaining seven cases (Group II).

2. Prior Orders by Arbitrator Sperow

Arbitrator Sperow made a number of pre-trial rulings which, by agreement of the parties and her case management order, are binding in these Group II proceedings.

(a) Statute of Limitations

On February 9, 2022, Arbitrator Sperow ruled that (1) California Code of Civil Procedure (CCP) Section 1281.12 operates to toll the statute of limitation applicable to the claims for

failure to pay wages, failure to pay overtime, waiting time penalties, and the California UCL claim from January 5, 2021 to July 19, 2021 and the claims for failure to provide meals and failure to provide itemized pay records from January 28, 2021 to July 19, 2021; (2) CCP Section 1281.12 does not toll the FLSA claim; and (3) Emergency Rule 9 did not toll any of the claims. (*See*, Sperow Order, dated February 9, 2022.)

(b) “Look Back”

On March 14, 2022, Arbitrator Sperow granted Claimants’ motion to include the tolled interval as part of the look back recovery period for the claims for which the equitable tolling doctrine tolled the applicable statute of limitations. Specifically, she ruled that the tolled interval adds 164 days to those claims but no days to the FLSA claim. (*See*, Order, dated March 14, 2022.)

(c) Discovery

Finally, Arbitrator Sperow has ruled on production requests, the scope of document production, a motion to produce payroll records with timecard details, and a motion for further clarification of damages. She ordered, *inter alia*, all Claimants to further specify their damages to include for each claimant:

- (1) the statutory basis for each damage claim;
- (2) the specific dates of each alleged violation to the extent known or deducible from the records produced by respondents (meal breaks, overtime, etc.);
- (3) the specific dollar amount for each alleged violation for each claimant;
- (4) a summary of damages for each claimant;
- (5) the method of calculation of damages by type (weighted average, meal break, etc.) for each claimant; and
- (6) an explanation of the calculation methods and figures denoted in Claimant’s Excel spreadsheets.

(*See*, Orders dated February 28 and March 30, 2022.)

3. Order on Demurrer to the PAGA Action

Respondent’s demurrer to the PAGA Action was submitted to the undersigned arbitrator

based on pleadings and briefing initially submitted in the Superior Court. Oral argument took place via telephone on October 31, 2022. By that time, the PAGA claim of Gustavo Martinez had become moot on account of rulings made by Arbitrator Sperow. In an Order by the undersigned entered on November 1, 2022, Respondent's demurrer to the PAGA claim made by Javier Alvizuri Hernandez was overruled. (*See*, Order dated November 21, 2022.)

4. Prior Interim Awards By Arbitrator Sperow

On September 23, 2022, Arbitrator Sperow issued her Interim Award for the Group I Claimants, granting relief on certain claims and denying relief on others. *See*, "Interim Award as to Claimants Kevin Oswaldo Perez Alvarez, Gustavo Martinez, and Carlos Gerardo Martinez with Findings of Fact and Conclusions of Law," filed September 23, 2022 (hereafter, "Sperow Award").

On December 2, 2022, Arbitrator Sperow issued her Interim Damages Award as to the Group I Claimants ("Sperow Damages Award").

Arbitrator Sperow has reserved jurisdiction for the purpose of presiding over any and all post-hearing proceedings in both Group I and Group II cases.

5. Interim Group II Award

On February 28, 2023, the undersigned arbitrator issued his Findings of Fact, Conclusions of Law And Interim Award ("Interim Group II Award") with respect to the Group II Claimants, reserving issues of damages, penalties and interest.

GROUP II CLAIMS

1. Complaints

The Causes of Action enumerated against all Respondents in each of the Group II Claimants' identical Complaints are as follows:

One	Failure to Pay for All Hours Worked and Failure to Pay Legal Minimum Wage (Violations of Wage Order and Labor Code §§ 204, 204b, 226.2, 223, 1194)
Two	Failure to Pay Overtime Wages (Violation of Wage Order and Labor Code §§ 510, 1194, 1198, 1771, 1774, 1810)
Three	Failure to Properly Pay Overtime Wages and For All Hours Worked (Violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 207, 216(b), and 255(a))

Four	Failure to Provide Accurate Itemized Wage Statements (Violation of Labor Code §§ 226, 226.2)
Five	Failure to Provide Meal Periods or Premium Wages in Lieu Thereof (Violation of Wage Orders and Labor Code sections 226.7 and 512)
Six	Failure to Provide Rest Breaks or Premium Wages in Lieu Thereof (Violation of Wage Orders and Labor Code Sections 226.7 and 512)
Seven	Failure to Pay All Wages Due Upon Termination (Labor Code § 203)
Eight	Restitution for Unfair Business Practices (Violation of California Business & Professions Code §§ 17200 <i>et seq</i>)
PAGA	In addition, and as previously noted, Claimant' Alvizuri makes a claim under the PAGA

2. Response

As noted, the Bechwatis have been dismissed. The corporate Respondent, by reason of its failure to file an Answer or other responsive pleading, is deemed to have generally and specifically denied the claims.

ISSUES FOR ADJUDICATION IN THIS ARBITRATION.

As framed by the parties' stipulations, the prior Orders and Awards of Arbitrator Sperow, the parties' pre-hearing briefing and the proof during the Group II evidentiary proceedings, the claims against Pacific Plumbing presented for adjudication herein are:

	Claim	Claimants
1.	<u>Failure to Pay For All Hours Worked</u>	
a.	Labor Code § 1720(a) "Mobilization"	Villanueva
b.	Minimum Wage	All (Villanueva, Castellanos, Ramirez, Hernandez, Alvizuri, Cardenas, Monjarez)
2.	<u>Failure To Pay Overtime Wages</u>	
a.	Off The Clock ("OTC") Drive Time	Ramirez, Hernandez, Alvizuri, Cardenas, Monjarez
b.	Early Overtime ("OT")	Villanueva, Ramirez, Hernandez, Cardenas
c.	Weighted OT	Villanueva, Ramirez, Hernandez, Alvizuri, Cardenas, Monjarez

3.	Failure To Provide Meal And/Or Rest Periods or Premium Wages in Lieu Thereof	All
a.	Late Lunch	All
b.	Lunch OTC	All
c.	Missed Rest Periods	All
4.	<u>Restitution For Unfair Business Practices</u>	All
5.	<u>Failure to Properly Pay Overtime Wages And For All Hours Worked (FLSA)</u>	All
6.	<u>PAGA Claim</u>	Alvizuri
7.	<u>Penalties</u>	
a.	Waiting Time Penalties	All
b.	Liquidated Damages	All
c.	Liquidated Damages (FLSA)	All

BURDEN OF PROOF

Claimants bear the overall burden of proving by a preponderance of the evidence that Respondent engaged in the wrongdoing alleged in each of the claims they make, that they have been damaged thereby, and that they are entitled to the penalties and/or liquidated damages claimed. The parties disagree as to whether, on the facts presented here, Respondent's time records (both paper and electronic) are so unreliable as to lose or substantially vitiate their evidentiary value and permit the arbitrator to consider evidence that Claimants have "in fact performed work for which [they were] improperly compensated and [. . .] evidence to show the amount and extent of that work as a matter of just and reasonable inference." *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721,727.

FACTUAL FINDINGS

The arbitrator heard the testimony of 19 witnesses over the course of the hearing in this matter. As well, numerous documents were received into the record. Arbitrator Sperow has published a 131-page Interim Award and a subsequent Damages Award, both of which make

numerous relevant findings. Finally, Respondents and the Group II Claimants have entered into a number of factual stipulations.

The findings of material fact set forth below are based on a careful review of the transcript of the Group II hearing, examination of the relevant documentary exhibits and factual stipulations, and consideration of Arbitrator Sperow’s awards. Where necessary to the resolution of factual disputes, witness credibility determinations are made.

The undersigned finds as follows:

A. The Parties

1. Claimants

1. The Group II Claimants were each employed as follows:

Claimant	Dates
Miguel Monjarez (“Monjarez”)	07-27-2009 - 12-20-2019
Alvaro Jose Cardenas (“Cardenas”)	01-02-2014 - 04-23-2021
Francisco Hernandez (“Hernandez”)	12-05-2015 - 05-07-2021
Miguel Angel Ramirez Ramirez (“Ramirez”)	10-01-2018 - 03-12-2020
Javier Alvizuri Hernandez (“Alvizuri”)	03-15-2019 - 10-13-2020
Jose Villanueva (“Villanueva”)	02-04-2019 - 06-15-2021
Jose Castellanos Cortez (“Castellanos”)	09-25-2020 - 03-19-2021

(See, Joint Stipulations of Fact, Set Three, at pp. 3-4.)

2. The Group II Claimants worked as laborers in Pacific Plumbing’s Construction Division on work crews led by one or the other of Pacific’s foremen, Noe Jamarillo (“Noe”), Ignacio (“Nacho”) Tavaréz and/or Lamberto (Pipo) Lara .²
3. All of the Group II Claimants are immigrants originally from Mexico. All, with the exception of Alvaro Cardenas, who speaks and reads English with some facility (but who testified with the assistance of a Spanish-language interpreter), are monolingual Spanish

² As first names were used throughout the testimony summarized in these findings, they will be used here for ease of reference.

speakers. None (again, with the exception of Cardenas) is able to read English with ease. Two, Francisco Hernandez and Miguel Monjaraz, appeared to be unable to read in either English or Spanish.

2. Respondent

4. Respondent Pacific Plumbing is and was at material times an “employer” within the meaning of the state and federal worker protection statutes applicable herein. Pacific Plumbing has two divisions: the Service Division, which handles repairs, leaks, pipe breaks, emergency calls, and underground emergency calls; and the Underground Construction Division, which handles more difficult and complex projects.
5. Joseph Bechwati (“Joseph” or “Joe” to others), is a Lebanese immigrant and is Pacific Plumbing’s founder and co-owner. He serves as the company’s Chief Executive Officer. Marleine Bechwati (“Marleine”), Joseph’s spouse, is Pacific Plumbing’s Chief Financial Officer and Chief Operating Officer.
6. Respondent’s facility, consisting of offices, a warehouse and shop space as well as a parking area/yard, is located at 329 Sango Court in Milpitas, California.

B. Findings – General

1. Initial Hiring Process/Orientation

7. For the most part, the Group II Claimants were hired informally, usually through a connection with an employee, a relative or one of the foreman at Pacific Plumbing.
8. As more particularly described below, most of the Group II Claimants were “onboarded,” a process that required new hires to present identification and work authorization as well as to sign paperwork required by Respondent.
9. Marleine onboarded all or most of the Group II Claimants, and her signature stamp appears on many of the documents in their files. She testified that she met with and provided a general verbal orientation to new hires. Marleine speaks a little Spanish, but testified that she used a foreman or Mercy Gutierrez, a bi-lingual office employee, to assist her in the process.
10. Some Claimants deny meeting with Marleine and others don’t remember doing so.

11. Marleine testified that she was careful to explain relevant rules regarding meal and rest breaks to all incoming employees. Again, this is disputed by some. At least two (Hernandez and Villanueva) seemed certain that they did not sit down with her.
12. New employees were required to sign, among other documents:
 - a. An “Acknowledgment Of Receipt And Understanding” of a 39-page set of rules and policies entitled “Pacific Plumbing & Sewer Service, Inc. Employee Handbook;” (*e.g.*, Rs. Ex. 1, p. 7.)³
 - b. A “Mutual Agreement To Arbitrate Claims;” (*e.g.*, Rs. Ex. 4., p. 1.) and
 - c. A “Non-Disclosure And Non-Solicitation Agreement.” (*E.g.*, Rs. Ex. 1, p. 4.)
13. These documents appear to have been provided to new employees only in English until 2019, when they began to be available in Spanish.
 2. Work Routine
 - a. The Work Day
14. The work day typically commenced when employees reached the shop, usually at around 7:00 am, to load vehicles and stage. The work day typically ended with their return to the shop to park and unload vehicles and stow equipment.
15. During the time period relevant to the claims in this matter it was Pacific Plumbing’s policy to pay all employees from the time they arrived at the shop in the morning and until they left the shop at the end of the day (Joint Stipulations of Fact, Set Three at ¶ 38.)
16. On occasion, workers reported before 7:00 am for work or returned from job sites after 3:00 pm.
 - b. Transportation to/From The Job Site
17. In general, crew members reported for work at Pacific Plumbing’s shop in Milpitas, then were transported in company vehicles to work projects at sites in and around the Bay Area.

³ The personnel file of each of the Group II Claimants is in the record as Rs. Exs.1 through 8. These files appear to contain, among other things, all documents bearing Claimants’ signatures. A copy of the Employee Handbook is found in the file of Jose Angel Castellanos. (Rs. Ex. 6, pp. 45-83.)

18. Work sites could be close by (Alameda County, San Jose) or more distant (Santa Rosa, South San Francisco and Sacramento, for instance). Drive time also differed depending on distance and traffic.
19. Certain Pacific Plumbing employees were designated as drivers. Drivers were responsible for performing construction labor on job sites, but also for getting Respondent's trucks and equipment and other crew member to the work site. Drivers are also dispatched during the work day to bring needed equipment to the jobsite or to haul material away.
20. Claimants Cardenas, Ramirez, Villanueva and Castellanos were employed as drivers.
21. There was a relatively brief period of time during which workers were told to report directly to their job sites and begin their work day upon doing so. Complaints about this system apparently led to its abandonment.
22. A dispute exists as to whether non-driver Group II Claimants were paid at all times for hours in transit from job sites back to the shop at the end of the work day.

3. Public Works Projects

23. In 2017, Pacific Plumbing began to bid on and accept work on public works projects, such as the San Jose Convention Center and a public facility in Morgan Hill.
24. These jobs required significantly different record-keeping and pay practices.
25. In around 2017, Marleine took a three to four-day US Department of Labor (DOL) course for the purpose of learning rules and regulations regarding public works projects. (*See*, Rs. Ex. 12.)
26. A dispute exists as to whether certain of the Group II Claimants were properly trained or instructed by their foremen about the unique timekeeping requirements used on public works projects (see below).

4. Breaks

a. Rest Breaks

27. Respondent's policy in regard to rest breaks is set forth in the Employee Handbook:
At minimum, the company makes available to non-exempt employees a paid, uninterrupted rest break of at least 10 minutes for shifts 3.5 to 6 hours in length, a second rest break of at least 10 minutes for shifts 6 to 10 hours in length, and a

third paid rest break of at least 10 minutes for shifts 10 to 14 hours in length. To the extent practicable employees should take rest breaks in the middle of each four-hour work.

(Rs.. Ex. 6 at p 57.)

28. All of the Group II Claimants testified that their foremen generally did not allow them to take mandated 10-minute rest breaks during the course of the work day. They claim that they had to find time on their own to get a drink, take a breather or use facilities as best they could, sometimes getting reprimanded for doing so.
29. Each of the foremen testified that their crews received regular and timely rest breaks as required by company policy and by the law. Moreover, they pointed to not-infrequent periods of enforced idleness as the crew awaited the delivery of materials necessary for the next phase of work. (*See, e.g.*, Rs. Ex. 54, the footrace video.)

b. Meal Periods

30. Pacific Plumbing's policy provides that:

At minimum, the company provides non-exempt employees an unpaid, uninterrupted meal break of at least 30 minutes after 5 hours of work, and an additional, unpaid, uninterrupted meal break of at least 30 minutes after 10 hours of work.

(*Id.*)

31. It appears to have been the custom at Pacific Plumbing to take an unpaid lunch break for a period of one hour. As the meal period was uncompensated, employees were expected to clock out for its entire, one-hour duration and then clock back in at the end.
32. There were times, at least on Nacho Tavarez's crews, when only a 30-minute break for lunch was taken, but workers were allowed to record an extra half- hour of work at the end of their shift.
33. Claimants testified that meal breaks began and ended when the foreman told the whole crew to start or end the period, not when they individually decided to do so.
34. Claimants testified that it was sometimes the case that, for various reasons, (a) lunch did not begin until after noon, and (b) the duration of the break was less than an hour. (Their

estimates of the frequency of late- and short-lunch occurrences are noted and discussed below.)

35. Noe, Nacho, Pipo and other witnesses for Respondent testified, on the other hand, that the Handbook's policy was uniformly and consistently applied and that state and federal law were scrupulously followed.
36. Marleine testified that company policy on lunch (and rest) breaks was made clear to employees not just by means of the Handbook, but on one-page posters throughout the shop and later on the workers' cell phone timekeeping apps. She said that Respondent didn't "babysit" employees with regard to breaks and that, moreover, those who were discovered to have been late taking a meal break were subject to discipline.
37. At least two workers were given documented verbal warnings on this issue.
38. There is no evidence in the record of any of the three foremen being disciplined for failing to allow timely rest or meal breaks.

5. Timekeeping

39. During the period material to this dispute, Respondent altered its method of timekeeping at least twice.

a. Paper Time Sheets

40. Early on, time records were kept on paper, with each employee filling out a paper time sheet at the end of a work week.⁴ Typically, it appears, time sheets were filled out on Friday afternoons (sometimes Monday mornings) at the shop, where employees would consult among themselves and with their respective foremen about, *e.g.*, job numbers, hours and breaks.
41. The "Pacific Plumbing & Sewer Service, Inc. Timesheet" in use during much of this case is a single-page document containing two columns allowing for six daily entries, three on each side. Each column has a space for the date, a job number, "Onsite job time," "Lunch" and "Office Use." A place for the employee's signature and another for the

⁴ In the record as Cl. Exs.1 through 7 are the time and pay records for each to the seven Claimants in Group II.

“Supervisor’s Signature” is found at the bottom of the form. Blank time sheets were made available to workers at the shop. Time sheets were due no later than 10:00 am on the Monday following the work week in question.

42. An example of a completed time sheet is found at Cl. Ex. 5 at p. 1, a time sheet for Claimant Miguel Angel Ramirez, reproduced here:

PACIFIC PLUMBING & SEWER SERVICE, INC
TIME SHEET

Employee Name: Miguel A. Ramirez Timesheet due every MONDAY 10:00 AM

DATE	JOB NO.	ONSET JOB TIME	LUNCH	OFFICE USE
Monday 10/11/18	33857	7am-12pm	12pm-1pm	
Monday 10/12/18	33857	7-12	12-1	
Monday 10/15/18	33858	7-12	12-1	
Monday 10/16/18		1-4:30		
Monday 10/17/18				
Monday 10/18/18				
Total Days' Onsite Job Time: 8.5				

DATE	JOB NO.	ONSET JOB TIME	LUNCH	OFFICE USE
Thursday 10/11/18	338386	5-12	12-1	
Thursday 10/14/18		1-4		
Thursday 10/15/18				
Thursday 10/16/18				
Thursday 10/17/18				
Thursday 10/18/18				
Total Days' Onsite Job Time: 10.5				

DATE	JOB NO.	ONSET JOB TIME	LUNCH	OFFICE USE
Thursday 10/16/18	338386	6-12	12-1	
Thursday 10/17/18		1-4		
Thursday 10/18/18				
Thursday 10/19/18				
Thursday 10/20/18				
Thursday 10/21/18				
Total Days' Onsite Job Time: 9.5				

DATE	JOB NO.	ONSET JOB TIME	LUNCH	OFFICE USE
Friday 10/15/18	338386	6-12	12-1	
Friday 10/16/18		1-4		
Friday 10/17/18				
Friday 10/18/18				
Friday 10/19/18				
Friday 10/20/18				
Total Days' Onsite Job Time: 9.5				

DATE	JOB NO.	ONSET JOB TIME	LUNCH	OFFICE USE
Wednesday 10/13/18	338386	6-12	12-1	
Wednesday 10/14/18		1-4		
Wednesday 10/15/18				
Wednesday 10/16/18				
Wednesday 10/17/18				
Wednesday 10/18/18				
Total Days' Onsite Job Time: 9.5				

DATE	JOB NO.	ONSET JOB TIME	LUNCH	OFFICE USE
Saturday 10/16/18	338386	5-12	12-1	
Saturday 10/17/18		1-4		
Saturday 10/18/18				
Saturday 10/19/18				
Saturday 10/20/18				
Saturday 10/21/18				
Total Days' Onsite Job Time: 10.5				

I certify that this document is a true and correct record of my hours worked (including any overtime) and that I received all compensation and was paid for all hours worked during the period unless otherwise specified on the document. ALL OF THESE ARE APPROVED BY SUPERVISOR. SUPERVISOR INITIAL TO OT WORKS!

Employee Signature: Miguel A. Ramirez SUPERVISOR SIGNATURE: [Signature]

OFFICE USE:
Regular Time: 410
OT: 15.5

43. Pacific Plumbing’s Employee Handbook provides instructions for the use of these time sheets in the following terms:

Non-exempt employees are required to sign in when they report to work and to sign out when they finish. They must also sign in and out at lunch time/break periods. Time records will be maintained by the Accounting Department. It is the employee’s responsibility to sign his/her time record to certify the accuracy of all time recorded. Each employee’s supervisor will review and then initial the time record for processing. In addition, if corrections or modifications are made to the time record, both the employee and supervisor must verify the accuracy of the changes by initialing the time recorded.

It is a violation of company policy for one employee to sign another

employee's time sheet, alter another employee's time sheet or alter his/her own time sheet without permission

(See, Rs. Ex. 6, Employee Handbook at p. 57.)

44. Actual practice with regard to time sheets deviated significantly, however, from these rules.
45. In a great number of the paper time sheets reviewed in this matter, significant changes have been made – with numbers having been written over (usually in different colored ink). Many have been whited out, erased or otherwise altered. As but one of many examples, see Claimant's C-5, p. 5, another of Miguel Angel Ramirez's time sheets, this one for the week of October 15, 2018, reproduced here:

PACIFIC PLUMBING & SEWER SERVICE, INC
TIME SHEET

Employee Name: Miguel A. Ramirez

Timesheet due every MONDAY 10:00 AM

DATE	JOB NO.	CHARGE JOB TIME	LUNCH	OFFICE USE
Monday 10/15/18	33857	7am-12pm	12pm-1pm	
Monday 10/15/18	33857	1pm-4pm		
Monday 10/15/18	33885	7-12	12-1	5
Monday 10/15/18		1-4		3
Monday 10/15/18				
Monday 10/15/18				
Monday 10/15/18				
Total Days' Charge Job Time:				8

DATE	JOB NO.	CHARGE JOB TIME	LUNCH	OFFICE USE
Thursday 10/18/18	338179	6:30-12		5.5
Thursday 10/18/18		12-7:30		8.5
Thursday 10/18/18	338179			
Thursday 10/18/18				
Thursday 10/18/18				
Thursday 10/18/18				
Thursday 10/18/18				
Total Days' Charge Job Time:				14

DATE	JOB NO.	CHARGE JOB TIME	LUNCH	OFFICE USE
Thursday 10/18/18	33885	6-12	12-1	9
Thursday 10/18/18		1-6:30		5
Thursday 10/18/18				
Thursday 10/18/18				
Thursday 10/18/18				
Thursday 10/18/18				
Thursday 10/18/18				
Total Days' Charge Job Time:				14.5

DATE	JOB NO.	CHARGE JOB TIME	LUNCH	OFFICE USE
Friday 10/19/18	33826	7-12	12-1	5
Friday 10/19/18		1-5		4
Friday 10/19/18				
Friday 10/19/18				
Friday 10/19/18				
Friday 10/19/18				
Friday 10/19/18				
Total Days' Charge Job Time:				9.5

DATE	JOB NO.	CHARGE JOB TIME	LUNCH	OFFICE USE
Wednesday 10/17/18	33885	7:30-12	12-1	4.5
Wednesday 10/17/18		1-4:30		3.5
Wednesday 10/17/18				
Wednesday 10/17/18				
Wednesday 10/17/18				
Wednesday 10/17/18				
Wednesday 10/17/18				
Total Days' Charge Job Time:				8

DATE	JOB NO.	CHARGE JOB TIME	LUNCH	OFFICE USE
Saturday 10/20/18				
Saturday 10/20/18				
Saturday 10/20/18				
Saturday 10/20/18				
Saturday 10/20/18				
Saturday 10/20/18				
Saturday 10/20/18				
Total Days' Charge Job Time:				

I certify that this document is a true statement of my hours worked (including any overtime) and that I received all such pay and any benefits to which I am entitled during the period under review as stated on this document. ALL OF MY TIME RECEIVED BY MY EMPLOYER.

Employee Signature: Miguel A. Ramirez

SUPERVISOR SIGNATURE: [Signature]

OFFICE USE
Regular Time: 40
OT: 8

46. As discussed further below, Ramirez testified that there were alterations and strike-outs entered on this time sheet, including two instances, one for October 6 and a second for October 8, 2018, where the hours he appears to have recorded were reduced.
47. Ramirez did not make, authorize or even know about these changes.
48. Other Group II Claimants testified about such alterations, and they appear frequently

throughout all of Claimants' time records. None said that they themselves made these type of changes.

49. In general Claimants testified that these changes were made without their knowledge, much less their permission.
50. None of these numerous changes appears to have been initialed by either the employee or his foreman indicating an agreement or permission to make a change.
51. In many, if not most, cases, the changes appear to alter hours worked, or the timing, or the duration of lunch breaks so as to bring Respondent into compliance with its own announced policy, or the law.
52. Notably, a review of a random selection of paper time sheets in these files suggests – wholly improbably – that all lunches by all crews at all job sites commenced precisely at noon and ended precisely at 1:00 pm every work day.

b. App-Based Time Recording

53. In 2019, the company shifted to app-based timekeeping. Marleine testified that she first started with a system called “T-Sheets,” then changed to an app provided by ADP.
54. Starting in 2019, employees, including Group II Claimants, were required to make time entries using software provided by Respondent on their cell phones.
55. Rest breaks on the software apps were entered automatically; meal breaks had to be inputted manually by employees.
56. The electronic records reflect that virtually all of the lunch breaks recorded on the devices appear to last precisely one hour.

C. Findings – Individual Group II Claimants

1. Miguel Monjaraz

57. Miguel Monjarez is the Group II Claimant who worked the longest at Pacific Plumbing. He began working in 2009, and his last day of work was December 20, 2019. At the beginning of his employment he was paid at the rate of \$15.00 per hour except for certain hours worked on public works projects. At the end, he was paid \$17.00 per hour. (Joint Stipulations No. 1, 8-10.)

58. He was hired informally and denies being onboarded by Marleine Bechwati or by anyone else when he first started work.
59. Although a handwritten signature appears on some new-hire paperwork (English language versions of the company arbitration agreement and non-disclosure/non solicitation agreement) he reads neither English or Spanish. (*See*, Rs. Ex. 7.)
60. He neither read nor had anyone read the Employee Handbook to him. (Tr. 328.)
61. During the entire course of his employment, he never filled out his own time sheets. His foreman filled out and signed his time sheets for him. (Tr. 326.)
62. His foreman at the time of his layoff was Lamberto Lara, “Pipo.”
63. He testified credibly that no one ever explained meal and rest break policy to him, and that he simply did what everyone else did and/or what his foreman told him to do in that regard. (Tr. 312, 316.)
64. He estimated that usually his lunch breaks were “at most” 45 minutes long, but that he received a full one-hour break maybe twice a week.
65. He denies getting rest breaks at all during his employment. (Tr. 317, 323.)
66. He never complained about this to anyone.

2. Alvaro Jose Cardenas

67. Alvaro Cardenas was hired by Nacho Tavarez in January 2014. He left Pacific Plumbing on April 23, 2021. He was paid \$18.00 at first and \$23.00 per hour by the end of his employment, except for certain hours worked on public works projects. (Joint Stipulations, Nos. 2, 11-15.) He worked on crews led by both Nacho Tavarez and Noe Jamarillo. He was designated as a driver.
68. His personnel records reflect that he signed various new-hire paperwork at the time of hire and that he signed an acknowledgment of receipt of the Employee Handbook in late 2015. He signed another acknowledgment for the 2019 version of the Handbook on May 20, 2019.
69. He testified that no one explained the policy on rest and meal breaks to him at first and that, when he first started working, there were no time sheets. (Tr. 9.)

70. When time sheets started to be used, he was given instructions about how to fill them out by Noe, who told him always to record a lunch period of 12:00 pm to 1:00 pm even when the break did not start at noon. (Tr. 14.) Both Noe and Nacho told him to “just do it that way” when he would protest. (Tr. 15, 17.)
71. He worked on at least one public works project (“government job”) at which he had to find out on his own how to fill out the necessary certified time sheets. (Tr. 17.) When he complained, he was told by Noe to “stop screwing around.” (*Id.*)
72. He testified that when a foreman was present on the project, he would tell the crew when to stop for lunch and that there were “many instances” when lunch would start after 12:00 pm.
73. If Nacho or Noe were somewhere else, then Cardenas would stop for lunch at noon, as would the rest of the crew. They would take a full hour unless they were concerned about getting work done to avoid repercussions when the foreman returned.
74. Cardenas received no instruction or training on rest breaks, which were regularly ignored. Cardenas never took them, never saw any other crew members take them and never complained about this for fear of being disciplined.
75. He states that when he stopped to get water during work, he would be whistled at or yelled at for doing so.
76. There were times, however, when the crew would find themselves idle because they were waiting for materials to arrive or for other reasons.
77. Cardenas testified that, at first, he was required to clock out at the job site so that his return to the shop was uncompensated until the advent of TSheets in mid 2020. (Tr. 22.)
78. He also claims that Nacho “disciplined” him by making him use his own vehicle to get to a work site when he complained about missing hours on his time sheet. (Tr. 37-8.)
79. Mr. Cardenas attended a company-wide meeting at some time within the three-year period of the date on which he left Pacific Plumbing. He does not recall what the meeting covered, but he does remember Joe Bechwati saying that “we're a family and that we shouldn't be suing because a lot of families are going to end up being without work.” (Tr.

53-4.)

80. On April 15, 2021, Cardenas took a video of himself working during his scheduled lunch hour. (Cl. Ex. 9.).
81. Cardenas filled out his own time sheets, but testified that some were altered without his knowledge or approval. The changes he made himself were accomplished by crossing out an entry; he did not use Wite-Out, nor did he ever see others using it. (Tr. 78.)

3. Francisco Hernandez

82. Francisco Hernandez, also known as Jesus Hernandez, began working at Pacific Plumbing in 2015. His last day of work was May 7, 2021. When he started, he received \$15.00. He was given raises throughout his tenure, and at the end he made \$23.00 per hour except when on public works projects. (Stipulations Nos. 4, 18-24.)
83. Hernandez was referred to Noe by a friend. Noe hired him and filled out his work application for him. (Tr. 284.)
84. Noe was also his foreman for much of the time that Hernandez was employed.
85. Hernandez testified that he never met with Marleine, that he never signed documents in her presence, not did she ever explain any of Pacific Plumbing's policies to him. (Tr. 285-6.)
86. Like Miguel Monjaraz, Hernandez does not read or write in English. He can read Spanish. (Tr. 284.)
87. His time sheets were also filled out by his foreman, usually Noe, until the advent of app-based timekeeping. He never questioned Noe's entries, preferring to trust him. He would sign his time sheet on Fridays with his signature, "F.F.H." (Tr. 245-6.)
88. During periods when Hernandez was on Nacho's crew, another employee, Alejandro Gonzalez, would fill out his time sheets to be signed by the foreman. (*Id.*)
89. Nacho would review these time sheets. Once, he took two hour off a time sheet that Hernandez had worked. He said, "where did these hours come from?" (Tr. 289.)
90. Lunch breaks took place when ordered by the foreman and ended when the foreman said, "It's time. Get up. We have work to do." (Tr. 250.) If no foreman was present, lunch

would start at 12:00 pm. (*Id.*)

91. Francisco recalls that the crew was told to always record “12-1” for lunch even when that wasn’t what happened. No one complained for fear of losing work. (Tr. 249.).
92. Hernandez estimated that the crew would get a full hour break perhaps three time a week; breaks on other days were 40, 45 or 50 minutes. (Tr. 248.)
93. He also recalled that when he worked on Nacho’s crew lunch would be 30 minutes, but that time was added to his time sheet at the end of the day for which he was paid.
94. From prior work experience, Hernandez testified, he knew that he was entitled to rest breaks. When he first began to work at Pacific Plumbing, he was allowed rest breaks, (Tr. 257) but later Noe did not always permit breaks, saying that the crew was not getting the work done. (Tr. 271.)
95. Hernandez did not complain about this, feeling that he needed to keep his job.
96. Hernandez worked on a number of jobs somewhat distant from the shop, including in Sacramento, Santa Rose, South San Francisco and Berkeley. His understanding is that he was not paid for the return trip to the shop. (Tr. 262.)
97. Hernandez worked on at least one public works project and got in trouble, he believes, because he told another employee that it was “a government job.” His foreman told him there would be no work for him the next day. (Tr. 271.)
98. On April 21, 2021, Hernandez was apparently given a verbal warning by Pacific Plumbing for “not taking lunch by the 5th hr” on March 23, 26 and 27, 2021. (Cl. Ex. 22.)
99. The form purporting to memorialize Hernandez’s verbal warning features the following language in bold print at the bottom:

By signing this warning, I am acknowledging that I have been counseled and warned as noted above. I also acknowledge that my employment is at-will and that the company reserves the right to apply whatever discipline, up to and including termination, is deemed appropriate in a given situation.

(*Id.*)

100. Hernandez denies signing the form. When confronted with it, he testified that the signature it bears is not his. (Tr. 277.)

101. When the company began using electronic timekeeping software, Hernandez experienced problems with it. The app would automatically clock out employees for an hour at first, whether or not they actually took that time off, and it would do the same for rest breaks. (Tr. 280, 299.)

4. Miguel Angel Ramirez Ramirez

102. Miguel Angel Ramirez was hired in October 2018 and remained employed until March 12, 2020. He worked as a driver and was paid \$20.00 per hour except for certain hours worked on public works projects. (Stipulations Nos. 5, 20.) He neither speaks nor reads English.

103. He testified that he was hired by Joe, who told him to look for Noe, who gave him the employment application and put him to work. (Tr. 120.) He recalls being given an Employee Handbook and taking it home. (Tr. 121.) His file, however, does not contain an acknowledgment of receipt.

104. His file (Rs. Ex. 8) contains signed copies of English language versions of Respondent's unlawful harassment policy and its arbitration agreement, both dated October 1, 2018.

105. Ramirez testified to the same approach to meal and rest breaks which others described:

- a. The crew would take the lunch when the foreman said it was time to do so, and would end the break in similar fashion. Sometimes lunch was before noon, sometimes not. He was instructed, however to fill in his time sheet every day indicating a "12-1" lunch break. (*See, e.g.*, Cl. Ex. 5; Tr. 129-30, 135.)
- b. On occasion Ramirez found himself driving during the crew's lunch break.
- c. He estimated that his lunch period was less than one hour long three times per week on average. (Tr. 132, 134.)
- d. Rest breaks were never taken as a group and generally not permitted. He took them as he could and needed to. (Tr. 137.)
- e. Ramirez did not complain about not getting breaks.

106. Ramirez also testified that his time records were altered without his authorization after he turned them in:

- a. For instance, on Thursday, October 18, 2018, Ramirez attempted to record the fact that he had not been able to take lunch by writing “not lunch” on his time sheet. This legend was stricken and the time sheet altered by someone else. (*See*, Cl. 5 at p. 5; Tr. 131.)
 - b. He was never asked to initial or otherwise approve this or any other changes to this time sheet.
 - c. Other time sheets were altered in the same fashion without his knowledge or authorization. (Tr. 14-43.)
 - d. He did not have access to or use Wite-Out.
107. Ramirez worked on public worked projects, but was never instructed by his foreman on the use of certified payroll records. Other employees showed him how to do it. (Tr. 150.)
108. He claims that he is owed compensation for lost pay on public works jobs (Tr. 147-48) and that his certified time sheets were altered without his knowledge or consent. (*See*, e.g., Cl. Ex. 5, p. 109.)
5. Javier Alvizuri Hernandez
109. Javier Alvizuri was hired by Joe Bechwati in March 2019 and worked for Respondent until October 13, 2020. His pay ranged from \$20.00 per hour to 21.00 per hour except when on public works projects. (Joint Stipulations Nos. 3, 16-17.)
110. He describes his English as “fair.” (Tr. 188.)
111. He testified that Joe did not explain anything to him about meal or rest breaks, although he was given an Employee Handbook and acknowledged receiving it. (Rs. Ex. 4 at p 3.) He had not worked in construction before.
112. Upon hire, he spoke with Nacho who told him when to report and to get some boots and a hard hat. He says that Nacho told him nothing about meal or rest break policies. (Tr. 192.)
113. He mostly worked on Nacho’s crew, although he was also on Noe’s crew for perhaps 10 shifts. Nacho did not explain meal or rest break policy to Alvizuri.
114. The meal break policy was that crew members could take 30 minutes off for lunch and then add 30 minutes at the end of the day on their time sheets. (Tr. 196.)

115. Alvizuri was told by Alejandro Gonzalez that lunch was 30 minutes but to always write "12-1" on his time sheet even if this wasn't accurate. (Tr. 193-4.) When he asked Nacho about this, he was told, "we had a lot of work and we had to hurry up to be able to finish." (Tr. 198.)
116. Alvizuri's testimony about rest breaks was that in general he and other crew members were not allowed to take them, that he thought this was not the way it should be, but that he didn't feel able to object too strongly. (TR. 204-5.)
117. He recalls a crew meeting at which the issue was discussed with Nacho:
- Well, when we had a meeting, a small meeting about rest breaks, he said that we could take them, that there was no problem. But at the same time he said that those that did take them, next time that work slowed down, they would probably be the first to get laid off, like threatening us.
- (Tr. 206.)
118. Alvizuri claims that Nacho told him he wouldn't be paid for time spent returning to the shop from a job site: "I asked Ignacio, but he told me that if I wasn't doing anything in the truck, why would I be getting paid.?" (Tr. 193.)
119. Alvizuri testified that travel from locations such as South San Francisco, Redwood City and Sacramento went uncompensated.
120. He also identified anomalies on his time sheets, such as changes and entries he did not make.
121. Alvizuri described anomalies with Respondent's electronic timekeeping apps including automatic entries of rest breaks which were not taken. (Tr. 203-4.)
122. Alvizuri worked on public works jobs, was not appropriately instructed as to how to fill out a certified time sheet, and was not properly compensated for his work on those jobs as a result.
123. On February 5, 2021, Respondent paid wages as a form of restitution for unpaid prevailing wages to Alvizuri in the sum of \$844.59, plus interest in the amount of \$84.86 on the "Della Maggiori Fire Sprinkler Job." (Joint Stipulation No. 32 (a)-(d).)

6. Jose Villanueva.

124. Jose Villanueva was hired by Noe in February 2019 as a driver. His last day of work was June 15, 2021. He earned between \$19.00 and \$21.00 per hour except when he was on public works projects. (Joint Stipulation Nos. 7, 28-31.)
125. He filled out his new-hire paperwork a week or so after he was hired. (Tr. 339.) No one helped him do this. He was given an Employee Handbook after a month. (*Id.*) he has no recollection of meeting with Marleine at the beginning of his employment, (Tr. 380.)
126. Noe was his foreman during the entire time he was employed. Noe told him that, as a driver, his work day would end upon return to the shop. (Tr. 339.)
127. Villanueva heard other workers complain “many times” that they weren’t getting paid for the time spent returning to the shop from a work site. (Tr. 340-41.)
128. No one told Villanueva what the rest break policy was. He did not take rest breaks, nor did others on his crew. (Tr. 348-49.)
129. Noe – and other workers – told Villanueva that he should always put down “12-1” for lunch breaks even though it didn’t always happen this way. (Tr. 345.)
130. Out of 10 days, lunch would start after noon three to four times on average. Lunch would be less than one hour about the same percentage of the time. (Tr. 346.)
131. The crew started and ended lunch as a group when the foreman gave the order to do so. (*Id.*)
132. Villanueva didn’t complain about anything out of fear of losing work.
133. He testified that he worked on “government” jobs, but got no instruction or guidance from the company about special timekeeping requirements in order to be paid prevailing wage rates and that he learned what he knew from fellow employees. (Tr. 358-9.)
134. Like others did, Villanueva testified to alterations on his time sheets that he neither made nor authorized. (Tr. 418.) He denied that he or any other employee he saw used Wite-Out on time sheets. (*Id.*)
135. He used Pacific Plumbing’s phone app-based timekeeping, but considered it inaccurate. It would become “blocked” so that he couldn’t use it, or would record time improperly. (Tr.

- 368.) When he went to the office to complain, he was told that there were “glitches.” (Tr. 371.)
136. The system automatically entered rest breaks whether he took them or not. (Tr. 376.)
137. Villanueva was warned for taking lunch late. (Rs. Ex. 36, p. 244; Tr. 415.) He considered the warning “abuse” and declined to sign the form acknowledging its receipt. (Tr. 416.)
138. Noe was unpleasant sometimes, telling workers, for instance to “Get the fuck up. Lunch is over. Stop screwing around. What are you doing?” (Tr. 353.)
7. Jose Angel Castellanos Cortez
139. Jose Castellanos, the most recently hired of the Group II Claimants, was hired by and worked for Nacho Tavaréz as a driver (although, unlike other drivers, he did not transport other crew members, only materials). (Tr. 422.)
140. His dates of employment were September 25, 2020 through March 19, 2021 and he was paid \$20.00 per hour when hired and \$22.00 at the time he left Pacific Plumbing. (Joint Stipulation Nos. 6, 26- 27.)
141. By the time Castellanos was hired, the company had switched over to electronic timekeeping and records storage, and his onboarding materials were “paperless.” (Tr. 421.) He claims, however, never to have received the employee handbook.
142. He testified that Nacho did not explain meal or rest break policy to him. (Tr. 421.)
143. Nacho never gave rest breaks. Indeed, Castellanos claims that he tried to use a rest break to stop by his home to sign some papers but that Nacho “ was monitoring me with the GPS, and when I arrived [at the job site], he scolded me and suspended me for three days.” (Tr. 430.)
144. As a dump truck driver, he was required to bring material or supplies to the job site.
145. He was not able to take a full lunch break because, although he would try to clock out for lunch while on the road, by the time he got back to the site, lunch was often partly over and Nacho would tell him to get back to work. (Tr. 422-23.)
146. Nacho also monitored Castellanos’ bathroom breaks via his GPS, complaining when he took too long. (Tr. 434.)

147. When he complained, Nacho told him to “eat quickly.” (Tr. 423.)
148. Castellanos estimated that he got an hour for lunch three times a week. On the other days, breaks were 40 to 45 minutes. (Tr. 425.)
149. He did not provide any testimony about late lunch periods. He did testify that the phone-based app would always record exactly one hour for lunch no matter what the actual length of his break might have been.

D. Findings – Damages

150. The damages claims of each of the Group II Claimants are set forth in a series of Excel spreadsheets, one for each Claimant. (Cl. Exs. 15-21.) These exhibits detail the amounts claimed for each claimed statutory violation. They include, as counsel indicates, numbers for liquidated damages and penalties which duplicate each other. They are based on pre-hearing assumptions made by Claimants’ counsel which, in several respects, are not borne out by the actual evidence summarized above.
151. The total amounts claimed for each of the Group II Claimants are set forth below:

Claimant	Exhibit	Amount
Miguel Monjarez	Cl. Ex. 15	\$81,325.78
Alvaro Jose Cardenas	Cl. Ex. 16	\$152,211.15
Francisco Hernandez	Cl. Ex. 18	\$148,757.47
Miguel Angel Ramirez Ramirez	Cl. Ex. 19	\$42,556.28 ⁵
Javier Alvizuri Hernandez	Cl. Ex. 17	\$162,502.23
Jose Villanueva	Cl. Ex. 21	\$47,528.04
Jose Castellanos	Cl. Ex. 20	\$15,128.00

E. Findings – Respondent’s Witnesses

152. Respondent offered the testimony of a total of 11 witnesses, including co-owners Joseph and Marleine Bechwati, Human Resources Head Tery Lim-Scott, all three foremen

⁵ Includes alleged PAGA penalties. Total indicated is based on calculations by the undersigned, as no total amount appears in the exhibit.

(Ignacio Tavarez, Noe Jamarillo and Lamberto Lara) and five other current or former Pacific Plumbing employees with experience working in the company's Construction Division (Patricio Sanchez, Marcelino Cuello, Ibrahim Mustafa, Atef Alshaladeh and Ray Tumeh).

153. The testimony of these witnesses can be summarized in two broad categories: (1) they generally controverted most if not all of the assertions of wrongful conduct made by the Group II Claimants; and (2) they testified to affirmatives steps taken by Pacific Plumbing to comply with applicable legal requirements.

1. Denial of Wrongful Conduct

a. Other Workers

154. Several of Claimants' former co-workers (Sanchez, Cuello, Mustafa, Alshaladeh and Tumeh) stated that they were never denied rest breaks, that meal breaks were for the most part taken prior to the fifth hour of a shift and that they were treated lawfully and respectfully by their foremen.
155. Patricio Sanchez, for instance, described taking timely, one-hour lunches and at least 10-minute rest breaks. He also stated that he was compensated for time spent traveling from job sites to the shop. (Tr. 452-470.)
156. Marcelino Cuello, testified to the same effect (Tr. 682-88), as did Ibrahim Mustafa (Tr. 688-700) except that Mustafa acknowledged occasions on which the lunch break started after 12:00 pm. (Tr. 693.) Ninety percent of the time, he stated, the break was before 12:00. (*Id.*)
157. Atef Alshaladeh testified as well that lunch breaks could take place after 12:00 pm. "We take it like 10 minutes later or 20 minutes later. Sometimes we take it before. Depends. But we always taking one-hour lunch." (Tr. 701.)
158. Ray Tumeh corroborated the above, adding that he and other workers were routinely allowed rest breaks. (Tr. 718-29.)

b. Foremen

159. The foremen themselves (Nacho, Noe and Pipo) denied the bulk of Claimants' job site

allegations with respect to, *e.g.*, compensation for hours spent returning to the shop, late or short meal breaks, and/or refusal to permit timely (or any) rest breaks or time to attend to personal needs.

160. They also denied verbally abusing any of the Claimants, retaliating against anyone for raising questions or suspending or temporarily laying off any employee for complaining.
161. They claim that they properly informed workers when they were sent to public works projects, and gave whatever assistance was requested with respect to filling out certified payroll records.
162. They deny any form of improper alteration of employee time sheets.
163. Noe Jamarillo (Tr. 589-671) testified specifically that:
 - a. He treated his crew respectfully at all times, though, given the realities of outside, underground construction, there were occasions when he had to whistle or yell;
 - b. Drive time was always paid except for a period when Pacific Plumbing experimented with having employees commute directly to job sites, a policy that was abandoned in the face of complaints from the crews;
 - c. Lunch and rest breaks took place timely, and crews often had time on their hands as evidenced by a video he took of a foot race while waiting for materials to arrive at a jobsite (Rs. Ex. 54.);
 - d. He did not take hours away from Francisco Hernandez; he helped him get a mistake corrected;
 - e. He made no changes on Miguel Angel Ramirez's timesheet (Cl. Ex. 5) or on anyone else's;
 - f. He had Wite-Out in his truck and that employees could use it if they needed to.
164. Lamberto Lara testified similarly to Noe with respect to meal and rest breaks. (Tr. 671-682.) He added that he filled out all of Miguel Monjarez's time sheets, explaining to Monjarez what he was doing while he sat next to him because Monjarez does not read or write. (Tr. 674-5.)
165. Nacho Tavarez (Tr. 729-7580 corroborated the testimony of others, adding that:

- a. He never used profanity or abusive language at work;
- b. He did implement, with the agreement of his crew, a 30-minute lunch break for a period of time, allowing workers to add 30 minutes at the end of the shift;
- c. He has helped out Marleine with onboarding of Spanish speaking employees;
- d. He has helped employees fill out time sheets, but never filled them out himself, nor has he made changes not consented to by workers;
- e. He has never received complaints about meal breaks including when he was allowing 30 minute breaks in return for adding time at the end of a shift; and
- f. Employees recorded a 12:00 to 1:00 pm lunch break for their own convenience: “They always put 12:00 to 1:00. And honestly, like I say, I don't see a big deal putting 12:00 to 1:00, that's why I never -- we never correct the right time. They -- and it was easy for them to calculate their hours because it was just, like, you know, they – they like to put 12:00 to 1:00, and then I don't see a big deal putting 12:00 to 1:00 because we got the lunch on time.”

c. Management and Human Resources

- 166. Similarly, Ms. Lim-Scott, Joe and Marleine all testified with respect to bringing workers on board, orienting them as to Pacific Plumbing’s break policies, and properly and repeatedly making the company’s wage and hour policies clear to Claimants.
- 167. Marleine was not aware of any instances in which foremen made changes to time sheet without the knowledge or consent of workers. (Tr. 503.)
- 168. She was aware that Pipo Lara filled out Miguel Monjarez’s time sheets because the latter cannot read.
- 169. She was not aware of Nacho’s arrangement with his crew in which they could get a half-hour added to their time at the end of a shift in return for taking a 30-minute lunch break. (Tr. 513.)
- 170. The company has never disciplined a foreman for changing a time sheet. (Tr. 531.)

2. Affirmative Evidence of Compliance

- 171. In addition, Respondent also presented evidence, primarily through Marleine Bechwati,

of its ongoing, affirmative efforts to comply with the law and to enable its employees to do so as well.

172. Marleine testified, for instance that Pacific Plumbing made sure that workers were informed during their onboarding process – and in subsequent training – of the specifics of the company’s policy on meal and rest breaks as well as their record-keeping responsibilities (time sheets). (Tr. 486-7.)
173. Employees were trained on how to fill out paper time sheets and then later on how to use the electronic systems utilized by the company:
 - a. Each was given a copy of Pacific Plumbing’s Employee Handbook and required to sign an acknowledgment that he had read and had understood it;
 - b. One-page posters were displayed throughout the workplace “in about ten places” spelling out break policies; (Tr. 487.)
 - c. These policies pop up and are available to workers on their phones when they open their timekeeping apps; (Tr. 494.)
 - d. Company-wide meeting were held to update employees on Pacific Plumbing policies on, *e.g.*, meal and rest break policy, unlawful workplace harassment and other topics;
 - e. Marleine and Tery Lim-Scott were available to answer questions, clear up time sheet problems and continue training employees on the mechanics of timekeeping;
174. Marleine, Joe and others testified that, in the absence of complaints from Group II Claimant or others, they believed that Pacific Plumbing was substantially compliant with its legal obligations. (Tr. 513.)
175. Marleine recognized problems when they were brought to her attention and made sure that Pacific Plumbing took immediate and effective steps to rectify them. Thus, when Pacific Plumbing became involved in litigation prior to this matter, appropriate changes were made in response. (Tr. 485.)
176. Indeed, Marleine has taken it upon herself to learn how to meet legal requirements when taking on, for instance, public works construction projects. (*See*, Rs. Ex. 12.)

177. In general Pacific Plumbing has striven to maintain a respectful, family-friendly atmosphere among its managers, supervisors and workers.

F. Findings – Restitution

178. In addition to the stipulation regarding restitution to Javier Alvizuri noted above, Respondent introduced evidence indicating restitution payments in November 2022 to all of the Group II Claimants (except Jose Castellanos) for claims based on “Early Overtime,” “Weighted Average Overtime.” and “Mobilization.” (See, Rs. Ex. 44 (Declaration of David Wang dated November 1, 2022); Rs. Exs. 46-51 (Excel spreadsheets) and Rs. Ex. 55 (copies of check stubs for each of the six Claimants).)

179. These payments were made prior to the commencement of the Group II hearing and after the issuance of Arbitrator Sperow’s Interim and Damages Awards..

180. The amounts paid by Respondent to each of the Group II Claimants are set forth below:

Claimant	Exhibit	Amount
Miguel Monjarez	Rs.. Ex. 47	\$273.21
Alvaro Jose Cardenas	Rs.. Ex. 49	\$3,751.25
Francisco Hernandez	Rs. Ex. 51	\$4,745.93
Miguel Angel Ramirez Ramirez	Rs. Ex. 48	\$1,025.78 ⁶
Javier Alvizuri Hernandez	Rs. Ex. 46	\$121.96
Jose Villanueva	Rs. Ex. 50	\$3,702.07
Jose Castellanos	--	\$0.00

APPLICABLE LAW

Arbitrator Sperow has not only made factual findings as to the Group I Claimants, but has reached extensive and quite detailed legal conclusions based on the facts presented to her. Of course, neither her findings of fact, her credibility determinations nor her legal conclusions are binding in the Group II case.

⁶ Includes alleged PAGA penalties. Total indicated is based on calculations by the undersigned, as no total amount appears in the exhibit.

As her summary of applicable legal principles appears accurate, exhaustive and relevant, at least in part, to issues in the Group II case, I have been inclined to avoid “reinventing the wheel” by conducting duplicative legal research and producing my own legal analysis. For that reason, at the end of the Group II hearing, I asked counsel to advise me in their post-hearing briefing whether and to what extent they disagreed with Arbitrator Sperow’s legal analysis of Group I claims also made by Group II.

Respondent’s counsel has not offered any indication of disagreement. Claimant’s counsel states that he largely agrees with Arbitrator Sperow’s analysis, suggesting only that her interpretation of the law is overly “narrow” with respect to two discrete points: (1) whether it is appropriate in this case to engage in *Anderson v. Mt. Clemens* burden-shifting,⁷ and (2) the availability of penalties and/or liquidated damages. These issues are addressed separately below.

With these exceptions, however, the undersigned adopts Arbitrator Sperow’s general summary of legal principles and incorporates it in this Final Arbitration Award.

CONCLUSIONS

The Complaints on file in this matter allege violation of state and federal labor law by Respondent in three general categories: (1) failure to pay for all hours worked, (2) failure to pay overtime wages and (3) failure to provide required meal and rest breaks as the law requires. In addition, restitution under the California Unfair Practices Act (UPA) (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) is prayed for, as are liquidated damages under California law and the Fair Labor Standards Act (29 U.S.C. 207, 216(b), 255a), waiting time penalties, interest, attorney’s fees and costs.

Based on the evidence presented at the hearing (as summarized above) and the applicable law (as summarized in the Sperow Awards), the undersigned reaches the following conclusions in each of the above category of claims:

A. Failure to Pay For All Hours Worked

Claimants’ First Cause of Action is styled “Failure to Pay For All Hours Worked and

⁷ See, *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 688 (1946); *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988).

Failure to Pay Legal Minimum Wage (Violations of Wage Order and Labor Code §§ 204, 204b, 226.2, 223, 1194.) (*See, e.g.*, Complaint for Damages and Equitable Relief filed May 23, 2021 on behalf of Javier Alvizuri Hernandez (“Alvizuri Complaint”).) In their Closing Brief, the Group II Claimants distill their demands in this category to the following:

Claims that workers on public works (PW) projects, subject to the payment of prevailing wages, were not paid all wages in that: (1) the mobilization work is compensable at the prevailing wage; (2) when overtime hours were worked the weighted average overtime method was not used; and (3) on some days where 8 hours were worked on a PW project, and a worker had worked at the shop, daily overtime or overtime after 8-hours was not paid because Pacific Plumbing only counter [*sic*: counted] the first 8-hours on a PW project as the hours worked for purposes of overtime wages.

(Claimants’ Arbitration Closing Brief at p. 11.)

(1) Mobilization (Villanueva)

Jose Villanueva is the only Claimant making a claim for mobilization damages. He apparently claims \$51.07 for being underpaid for time spent preparing to work on public works jobs. (Cl. Ex. 21 at p. 1, line 10.) His hearing testimony tends to undercut the assertion, however: “I was paid for the time that I worked. I was paid correctly. When there were missing hours, it was fixed. So yes, my hours were paid.” (Tr. 339-40.) As well, the amount set forth in the cover page of counsel’s spreadsheet – \$51.07 – is not tied to any particular testimony by Mr. Villanueva and is, in any event, difficult to reconcile with the purported backup data.

Conclusion No. 1: It cannot be found by a preponderance of the evidence that Mr. Villanueva has met his burden of showing that he is entitled to mobilization pay above and beyond what has already been provided as restitution.

(2) Weighted Average Overtime and (3) Early Overtime (All)

The Complaints also assert that certain Claimants were not paid properly in connection with certain public works projects. (Alvizuri Complaint at pp. 9-12; Claimant’s Arbitration Brief at pp. 15-18.) Respondent’s position on these issues is essentially that it made a mistake. When the extent of the mistake was made evident in Arbitrator Sperow’s awards to the Group I Claimants, it was rectified with the restitution checks to Group II Claimants described above.

Claimants' counsel acknowledges the restitution paid by Respondent in November 2022, conceding that Claimants have been "mostly" made whole. (*id.*) but quibbles with the amounts and the calculation methodology, suggesting that the formula Respondents used was "not understood." (*Id.*). Exhibit A to Claimants' Closing Brief apparently reflects counsel's own modification of Respondent's witness David Yang's calculations referred to above. Leaving aside the question of whether these modifications are proper evidence, they are wholly unedifying.

Conclusion No. 2: It cannot be found by a preponderance of the evidence that Claimants have met their burden of showing that they are entitled to weighted average and early overtime pay above and beyond what has already been provided as restitution.

B. Failure To Pay Overtime Wages

The Second Cause of Action brought by Claimants is for "Failure to Pay Overtime Wages (Violation of Wage Order and Labor Code §§ 510, 1194, 1198, 1771, 1774, 1810)." In Claimants' post-hearing briefing, these claims are addressed three sub-categories: (1) claims by Alvizuri, Monjarez, Cardenas and Hernandez that they were not paid for time spent returning from job sites to the Pacific Plumbing shop, (2) early overtime and (3) weighted overtime.

(1) Off The Clock Drive Time (Alvizuri, Monjarez, Cardenas, Hernandez)

Four Claimants seek damages in this category as follows:

Claimant	Exhibit	Amount
Miguel Monjarez	Cl. Ex. 15	\$13,912.50
Alvaro Jose Cardenas	Cl. Ex. 16	\$22,117.50
Francisco Hernandez	Cl. Ex. 18	\$22,605.75
Javier Alvizuri	Cl. Ex. 17	\$ 8,437.50

The record contains testimony from each of these Claimants reflecting their understanding that they were routinely required to punch out at the work-site and return to the shop in a company truck but on their own time. There is also testimony from workers designated as drivers to the effect that they didn't believe that their passengers were on the clock when returning to the shop. None of the testimony, however, was tied specifically to time sheets or other evidence at the hearing in support of what these Claimants said.

The spreadsheets prepared by claimant’s counsel are unhelpful, inasmuch as they simply assume unpaid time in the average amount of 45 minutes per workday – for all days worked – and, at least according to Respondent, some not worked. In his post-hearing submission, rather than attempt to connect his spreadsheet figures to actual testimony or documentary evidence, counsel simply invites the arbitrator to “modify the 45-minute benchmark or even adopt a benchmark travel time as to certain times or months.” (Arbitration Closing Brief at p. 30.)

Respondent, for its part, points to considerable evidence from other Claimants as well as from Respondent’s own witnesses to the effect that all employees, per company policy, were paid for time returning to the shop.

There does appear to have been a period of time when Respondent required its workers to commute to work sites in their own vehicles so as to avoid paying them except when they were actually on the job. It is undisputed, however, that this unpopular though legal practice was abandoned when Respondent’s employees expressed dissatisfaction with it.

Here, Claimant’s counsel sounds the call for burden-shifting per *Anderson v. Mt. Clemens*. (Arbitration Closing Brief at p. 27.) As Claimants have not met the threshold of proof necessary to invoke that analysis, it is not necessary to reach it.

Conclusion No. 3: It cannot be found by a preponderance of the evidence that Claimants Alvizuri, Monjarez, Cardenas and Hernandez have met their burden of showing that they are entitled to overtime pay for time spent returning to work from work sites.

(2) Early Overtime (Villanueva, Ramirez, Hernandez, Cardenas)

As discussed above in Section A(2), these claims are moot.

(3) Weighted Overtime (Villanueva, Ramirez, Hernandez, Alvizuri, Cardenas, Monjarez)

These claims are also moot.

C. Failure To Provide Compliant Meal Periods (All)

Claimants’ Fifth Cause of Action alleges “Failure to Provide Meal Periods or Premium Wages in Lieu Thereof (Violation of Wage Orders and Labor Code sections 226.7 and 512).”

The evidence in this case reveals a gap between the employer’s enunciated policies with respect to meal and rest breaks on the one hand, and the actual practice in the field on the other.

Pacific Plumbing produced evidence of uniform policies carefully tailored to comply with applicable law, of efforts to inform and remind its employees of these rules, and of steps taken to enforce them, including discipline of employees who violated them. It is claimed that workers were oriented and trained on these policies at the outset of their employment, and that they were required to acknowledge in writing that they had received and understood them. They were reminded of the rules periodically in meetings and by means of posters in the shop. By 2019, material explaining meal and rest break policy was available in Spanish and on employees' timekeeping apps on their cell phones. Respondent's foremen were also careful to observe the letter of the law, erring on the side of caution that is necessary.

Claimants, on the other hand, describe conditions quite differently. First, as Claimants' counsel points out, the policy as set forth in the Employee Handbook is a confusing, if not an incorrect statement of what the law requires: "At minimum, the Company provides non-exempt employees an unpaid, uninterrupted meal break of at least 30 minutes *after* 5 hours of work, and an additional, unpaid, uninterrupted meal break of at least 30 minutes after 10 hours of work." (Emphasis supplied.) Even those of respondent's employees who can read English would be misled as to their rights, so the argument goes.

Also, Claimants were generally able to access accurate information about Respondent's employment policies only imperfectly. Only one (Cardenas) can read English at all well, another reads a little and the others not at all. Until 2019, company rules were not available in Spanish. So the dense, lengthy Employee Handbook, the arcane agreements with respect to *e.g.*, intellectual property, non-competition and mandatory arbitration meant little if anything to monolingual Spanish speakers signing up for manual labor. The rules about meals and rest breaks were likely similarly obscure.

More important, Claimants assert, the reality on the ground is that crews perform their work under the sometimes intense pressure created when construction work in public spaces needed to be completed timely so that streets can be reopened. Foremen pressed workers to complete tasks even when doing so meant delaying meal breaks, shortening them or even skipping rest periods. Demands to keep working could not be resisted for fear of job loss or

retaliation. A meal break or a ten minute rest period would take place when and only when the foreman said it could, and would end in similar fashion at the foreman's command, even if the allotted time for the break had not fully passed. Workers found themselves without time to get to bathrooms and described urinating in trenches.

Against this background, all Claimants charge Respondent with the following:

(1) Late Meal Breaks

The Group II Claimants all testified that, to some extent, they found themselves unable to take their meal break before the beginning of the fifth hour of their shift. Their recollections about how often this occurred varied considerably: from once in every 10 shifts to 40% or more of the time. Claimant's counsel produced painstaking audits of each Claimant's time records. These audits reveal claims as follows:

Claimant	Exhibit	Amount
Miguel Monjarez	Cl. Ex. 15	\$3,150.00
Alvaro Cardenas	Cl. Ex. 16	\$5,737.81
Javier Alvizuri	Cl. Ex. 17	\$4,257.82
Francisco Hernandez	Cl. Ex. 18	\$9,675.00
Miguel Angel Ramirez	Cl. Ex. 19	\$1,742.30
Jose Castellanos	Cl. Ex. 20	\$770.00
Jose Villanueva	Cl. Ex. 21	\$4338.16

It is noted here that Arbitrator Sperow initially estimated that 10% of the time Group I Claimants were subjected to late meal breaks, but then revised her analysis:

However, in those instances in which the time records accurately reflect a start time earlier than 7 am, the Arbitrator agrees with claimants that a noon meal break would not comply with the statutory requirement and would thus entitle claimants G. Martinez and C. Martinez to premium pay for the tardy break. Indeed, California presumes noncompliance if the employer's records support it in that they reveal noncompliant break times without premium pay.

(Sperow Damages Award at p. 4.)

Based on the evidence in the record, the same approach to the late meal break issue is

appropriate here.

Conclusion No. 4: Claimants have shown by a preponderance of the evidence that they are entitled to damages in the amount of an additional hour of pay at their then-current rate for each violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) found in their respective pay records.

(2) **Shortened Meal Breaks**

Claimants also testified with varying degrees of certainty that their lunch breaks were routinely cut short by their foremen, often due to exigent work circumstances. While the policy was that workers were entitled to – and had to punch out for – one full hour as an unpaid lunch break, they claimed to have been frequently summoned back to work before the expiration of the hour. In these instances, they allege that they were being compelled to work off the clock.

Respondent's witnesses asserted that employees were allowed to take unpaid meal breaks of at least one hour, per the company policy. Foremen testified to regular compliance with the policy and to the lack of complaints from workers in this regard. Ms. Bechwati confirmed that, as far as she knew, workers were allowed proper meal breaks.⁸

Pacific Plumbing also emphasizes efforts to instruct and educate its workforce with respect to their meal break rights, citing, among other things, a comprehensive onboarding process, the Employee Handbook, posters allegedly displayed in the workplace, and employee meetings of various kinds. As evidence of genuine attempts to establish and clarify Respondent's policy, however, the evidence falls short.

One example of the disconnect in this regard is Francisco Hernandez, hired in 2015. He is unable to read English. All of the new-hire documentation in his file, including the Acknowledgment of Receipt and Understanding of the Employee Handbook, are in English. Marleine Bechwati claims to have onboarded Hernandez and explained Respondent's work policies to him, including its policies on meal and rest breaks. Hernandez credibly denies ever

⁸ The only variation in this regard seems to be that Nacho Tavarez offered workers on his crew the option to cut their meal break to a half-hour in return for getting that half-hour back at the end of the shift. The testimony of several of the Claimants corroborates this, although it is not clear how consistently this practice was reflected on employee pay records, most of which simply record "12-1" for lunch.

having met with Marleine, and the documentation in Hernandez's file tends to undermine Marleine's testimony.

Respondent offers the "verbal warning" to Hernandez in April 2021 as an example of its vigorous enforcement of its policy that employees are to start their meal break prior to the fifth hour of their shift. (Cl. Ex. 22.) Hernandez denies ever seeing the documentation of this warning, and, when confronted with it at the hearing, testified that the signature on the document was not his. It is difficult to understand this "warning" as anything more than an attempt – after the company had been hit with litigation – to give an impression of rigorous enforcement of meal break policy.⁹

Another example is Alvaro Cardenas, hired in 2014. He credibly testified that, as a driver, he was frequently required to work through lunch. As proof of this, Cardenas offered a video he claims to have taken on April 15, 2019, a day when his time sheet reflects a one-hour lunch, in his truck transporting construction material. (Cl. Ex. 9.)¹⁰

Respondent's time and pay records are similarly unhelpful. This is because workers were told to record their lunch breaks as taking place from "12-1" whether or not it in fact they occurred during those hours and/or lasted for an entire 60 minutes. The thousands of time records compiled in the Group II case almost all show a lunch break of exactly one hour, and the paper records uniformly reflect that the hour was taken "12-1." Several Claimants testified that they were instructed to enter their lunch breaks in this fashion, and Nacho Tavarez confirmed the practice, observing that it is "no big deal." The time sheets, therefore, become largely meaningless as proof that meal breaks were taken "12-1," or at any particular time, or for any particular duration.

It is also the case that suspicious alterations and erasures with respect to lunch breaks appear on a significant number of Claimants' time records. These changes were uniformly

⁹ Respondent also "warned" Jose Villanueva, but he refused to sign the proffered acknowledgment, calling it "abuse."

¹⁰ The authenticity of the Cardenas video was sharply contested at the hearing. A careful review of the conflicting testimony, however, leads the undersigned to credit Mr. Cardenas and conclude that the video is evidence that, at least on the date in question, he was working off the clock.

disavowed by Claimants, were never initialed as required by Respondent's policy and always seem to work in favor of Respondent and against the employee. None of Respondents witnesses – foremen or office personnel – were willing to admit making or changing entries on Claimants' time sheets except for Lamberto Lara who readily acknowledged that he filled in all of Francisco Hernandez's records because Hernandez cannot read or write.

Claimants' estimates of off-the-clock time during lunch breaks very widely. Respondent asserts, based on employee time records and record testimony, that no violation of applicable law has been proven, and that, in any event, employee accounts and estimates constitute unfounded speculation.

Counsel for Claimants again argues here that, as Respondent's records are wholly unreliable, the burden-shifting contemplated in *Anderson v. Mt. Clemens* and *Hernandez v. Mendoza* is required so as to avoid an injustice to his clients. He suggests that the arbitrator find the Claimants were subjected to short lunch breaks 40% of the time and that the average lost time was 30 minutes. (Cl. Exs. 16-21.)

Arbitrator Sperow's careful analysis of the burden-shifting cases (Sperow Award at pp. 96-100) is incorporated herein. Applying it to the facts of the Group II case, however, I reach a different conclusion than she did, namely that the time records cannot be considered reliable evidence of the actual duration of employee lunch breaks. Further, based on an evaluation of the testimony heard in the Group II case as a whole, I find it reasonable to conclude that Claimants' meal breaks were shortened on average 20% of the time and that the average amount of uncompensated time on such occasions was 20 minutes.

Conclusion No. 5: Claimants have shown by a preponderance of the evidence that they are entitled to compensatory damages for twenty (20) minutes of off-the clock work at their then-current rates for 20% of the total number of eight-hour shifts each Claimant worked in violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods).

Conclusion No. 6: Claimants have shown by a preponderance of the evidence that they are entitled to premium pay pursuant to Cal. Lab. Code § 226.7 at their then-current rates for 20% of the total number of eight-hour shifts each Claimant worked in violation of Cal. Lab

Code § 218 and 1194 (failure to provide one-hour meal periods).

D. Failure To Provide Compliant Rest Periods (All)

Claimant's Sixth Cause of Action is for "Failure to Provide Rest Breaks or Premium Wages in Lieu Thereof (Violation of Wage Orders and Labor Code Sections 226.7 and 512)." Their evidence in support of their claims is similar to their evidence with respect to meal breaks, that is, each Claimant testified to his recollection of the extent to which 10-minute rest breaks were afforded or denied by the company. Testimony ranged from "never" (Cardenas and others) to "sometimes," (Hernandez) with most Claimant's stating that rest breaks were routinely denied. Claimant's counsel asserts that his clients were denied this right 100% of the time, and his spreadsheets reflect this, but he again invites the arbitrator to make its own determination. (Closing Brief at p. 12.)

Respondent again argues that Claimants's testimony is unreliable and that the company has been wholly compliant in this regard.

Taken as a whole, the evidence does not support a finding of 100% compliance or zero compliance. It is telling, certainly, that claimant Jose Castellanos was reprimanded for taking a few minutes off to sign some personal papers needed by his wife. It would seem that if a lawful rest-break policy were in place, a brief errand of this sort would have been countenanced and discipline would not have been appropriate. It cannot be assumed, however, especially in light of considerable testimony to the contrary, that no rest breaks were ever permitted.

Here again, the legal analysis contained in the Sperow Award (pp. 58-60, 63-5) is noted and incorporated. For the reasons set forth above with respect to off-the-clock work during meal breaks, similar conclusions are reached with respect to rest breaks:

Conclusion No. 7: Claimants have shown by a preponderance of the evidence that they are entitled to premium pay pursuant to Cal. Lab. Code § 226.7 for one hour at their then-current rates for 20% of the total number of rest breaks Claimant missed in violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks).

E. Restitution For Unfair Business Practices (All)

Claimants' Eighth Cause of Action makes a claim under the California Unfair

Competition Act (UCL), Cal. Bus. & Prof. Code §§ 17200. The gist of the claim is that Respondent's pay and break practices are unlawful or unfair. Arbitrator Sperow addresses the application of the UCL to claims made in the Group I case, and her lengthy analysis is again incorporated here. (Sperow Award at pp. 72-95.)

Although Ms. Sperow found the unlawful prong of the UCL applicable to one of the Group I Claimants (*id.* at p. 95), the Group II Claimants apparently abandon this cause of action. No mention of it appears in Claimants' pre-hearing submission, nor is the effect of its possible application addressed in counsel's spreadsheets.

Claimants' closing submission is similarly silent with the exception of what appears to be a throwaway line on the last page referring in the Conclusion to "the broad powers of the Unfair Competition Act." (Claimants' Arbitration Closing Brief at p. 40.) Respondent's arguments that the business practices at issue are neither fraudulent, unfair or unlawful (Respondent's Closing Brief at p. 12-13) are unanswered.

In the absence of any guidance and argument from the parties making this claim, elucidating on what aspects of Respondent's policies rise to the level of unfairness or unlawfulness, it does not appear prudent, fair to Respondent or really even possible to reach any conclusion with respect to this cause of action except that it has been abandoned.

Conclusion No. 8: Claimants' Eighth Cause of Action for Violation of the California Unfair Competition Act (UCL), Cal. Bus. & Prof. Code §§ 17200, is dismissed for want of prosecution.

F. Failure to Pay Overtime Wages And For All Hours Worked (FLSA) (All)

As their Third Cause of Action, Claimants allege "Failure to Properly Pay Overtime Wages and For All Hours Worked (Violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 207, 216(b), and 255(a))." The conduct relevant to this claim is the same as that discussed above in Sections A and B, and the undersigned reaches the same conclusions as to their cause of action. Remedy issues are discussed below.

Conclusion No. 9: Claimants have shown by a preponderance of the evidence that they are entitled to non-duplicative relief on their Third Cause of Action for Failure to Properly Pay Overtime Wages and For All Hours Worked (Violation of the Fair Labor Standards Act (FLSA)),

G. PAGA Claim (Alvizuri)

On April 28, 2021, Javier Alvarez made a claim under the California Labor Code Private Attorney General Act (PAGA), Cal. Lab. Code §§ 2699 *et seq.*, by filing a letter with the California Labor and Workforce Development Agency (“LWDA”). As noted above, the undersigned overruled Respondent’s demurrer to the PAGA claim. The parties have briefed the issue and request a ruling on the merits of Alvarez’s claim.

Alvarez quit his employment with Respondent on October 12, 2020. He claims PAGA penalties for the 25 weekly pay periods between April 28, 2020 and the end of his employment. This is based on his assertion that, in each of these pay periods, his rights were violated by Respondent as alleged in his Complaint.

The parties agree that it is within the arbitrator’s sound discretion whether and to what extent to award penalties under the PAGA. In the exercise of that discretion, it is concluded that PAGA penalties are appropriate in Alvarez’s case on the same causes of action and in the same proportion arrived at above. Where no relief was granted as to a cause of action, no penalty is awarded. As to Alvarez’s late meal break claim, he is awarded PAGA penalties for each of the 11 pay periods for which he has established a violation. (*See*, Claimants’ Closing Arbitration Brief at p. 39.) As to other causes of action in which 20% of the relief requested has been granted, PAGA penalties of roughly 20% of the total amount that could be granted are awarded: two pay periods. ($25 * 20\% = 5$.)

Conclusion No. 10: Javier Alvarez is awarded penalties under the PAGA in amounts to be calculated by counsel based on the findings made above.

H. Penalties and Liquidated Damages (All)

1. Waiting Time Penalties

Claimants’ Seventh Cause of Action is for “Failure to Pay All Wages Due Upon Termination” in violation of Cal. Lab. Code § 203. It is alleged that, by reason of its failure to fully compensate Claimants with respect to certain meal and rest breaks, Respondent violated Cal. Lab. Code § 203, requiring payment of all wages due on termination. In their Seventh Cause of Action, Claimants seek a finding that Respondent’s conduct was “willful,” entitling them to

so-called waiting time penalties amounting to the equivalent of 30 days pay at the rate upon termination.

Arbitrator Sperow examined this issue with considerable care and concluded in her case that waiting time penalties are not appropriate. (*See*, Sperow Award at pp. 66-72,) Claimant's counsel, while agreeing with her characterization of the generally applicable legal principles, contends that the undersigned should decide this issue the other way, given the record in the Group II cases. (Claimants' Arbitration Closing Brief at pp. 32-26.) Respondent contends otherwise. (Respondent's Closing Brief at pp. 13-15.)

The issue is by no means an easy one. Respondent can point to significant evidence that, overall, it has acted in good faith, learning from past errors which have resulted in litigation against it and taking steps to correct its practices. Pacific Plumbing also makes the case that it has been responsive to employee concerns, as when it discontinued its practice of requiring employees to commute to remote work sites when they complained about it. Restitution paid to the Group II Claimants also must be considered.

On the other hand, a strong inference arises from the testimony of both Claimants and even some of Respondents witnesses that the company is as interested in creating a defensible paper record of compliance with the law as it is in actually assuring that conditions exist in which employees understand their rights and can assert them without fear of repercussions. Significantly, Respondent cites to discipline of employees found to have taken their lunch break after the fifth hour of work, but there is no evidence that any foreman has been counseled, warned or otherwise disciplined.

Employee time sheets are another example of this problem: Respondent relies on them as evidence of compliance, but it's witnesses were unable to explain many of the anomalies associated with them: at least two of the Group II Claimants relied exclusively on their foremen to fill out their time sheets (in violation of the handbook's policy); countless changes and alterations appear in time sheets (none initialed as required by the handbook) all of which Claimants deny making, none of which anyone else appears to acknowledge as theirs – and most of which appear to redound in favor of Respondent.

Based on these factors a finding of willfulness is made.

Conclusion No. 11: Claimants are awarded waiting time penalties under Cal. Lab. Code § 203 in amounts to be calculated by counsel based on the findings made above.

2. Liquidated Damages (Cal. Lab. Code § 1194.2)

Liquidated damages under the Labor Code are available here only on Claimants' allegation of off-the-clock meal time work, and only then on a finding of bad faith. Consistent with the Statute, the parties have stipulated that:

If the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or of an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

(Joint Stipulations of Fact (Set Three) at ¶ 34.) On this issue, as on others, this arbitrator has the benefit of Arbitrator Sperow's analysis which is incorporated here. (*See, e.g.*, Sperow Award at pp. 116-120) The arguments made by the parties for and against an award of liquidated damages focus on the issue of Respondent's subjective and objective good faith, with Pacific Plumbing contending that it has met its burden of showing both.

For the essentially the same reasons a finding of willfulness was made above, the undersigned concludes that Respondent has not met its burden, and the defense is not available to it on these facts.

Conclusion No. 12: Claimants are awarded liquidated damages under Cal. Lab. Code § 1194.2 in amounts to be calculated by counsel based on the findings made above.

3. Liquidated Damages (FLSA)

The parties have entered into a similar stipulation with respect to liquidated damages under the Fair Labor Standards Act, to wit: "An employer can avoid the imposition of liquidated damages under the fair labor standards act if it can show that the act or omission giving rise to

unpaid wages was in good faith and that it had reasonable grounds for believing that its act or omission was not a violation of the FLSA.” (Joint Stipulations of Fact (Set Three) at ¶ 35.)

For the same reasons it is found appropriate to award liquidated damages under California law, it is determined that they are appropriate under the FLSA.

Conclusion No. 13: Claimants are awarded non-duplicative liquidated damages under the FLSA in amounts to be calculated by counsel based on the findings made above.

H. Other Claims

Claimant’s Fourth Cause of Action states a claim for “Failure to Provide Accurate Itemized Wage Statements (Violation of Labor Code §§ 226, 226.2)” The issue is not briefed. A review of Claimants’ pay records fails to reveal any significant, actionable violations of the applicable statutes.

Conclusion No. 14: Claimants’ Fourth Cause of Action for Violation of California Labor Code §§ 226, 226.2 is dismissed for want of prosecution.

I. Interim Group II Award

The Interim Group II Award, filed on February 28, 2023, held as follows:

1. With respect to **Conclusion No. 1**, above, as it could not be found by a preponderance of the evidence that Mr. Villanueva had met his burden of showing that he was entitled to mobilization pay above and beyond what had already been provided as restitution, he was awarded nothing on his claim.
2. With respect to **Conclusion No. 2**, above, as it could not be found by a preponderance of the evidence that Claimants had met their burden of showing that they were entitled to weighted average and early overtime pay above and beyond what had already been provided as restitution, they were awarded nothing on their claim.
3. With respect to **Conclusion No. 3**, above, as it could not be found by a preponderance of the evidence that Claimants Alvizuri, Monjarez, Cardenas and Hernandez had met their burden of showing that they were entitled to overtime pay for time spent returning to work from work sites, they were awarded nothing on their claims.
4. With respect to **Conclusion No. 4**, above, as Claimants showed by a preponderance of

the evidence that they are entitled to damages in the amount of an additional hour of pay at their then-current rate for each violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) found in their respective pay records, they were awarded amounts to be determined.

5. With respect to **Conclusion No. 5**, above, as Claimants showed by a preponderance of the evidence that they are entitled to compensatory damages for twenty (20) minutes of off-the clock work at their then-current rates for 20% of the total number of eight-hour shifts each Claimant worked in violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods), they were awarded amounts to be determined.
6. With respect to **Conclusion No. 6**, above, as Claimants showed by a preponderance of the evidence that they are entitled to premium pay pursuant to Cal. Lab. Code § 226.7 at their then-current rates for 20% of the total number of eight-hour shifts each Claimant worked in violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods), they were awarded amounts to be determined.
7. With respect to **Conclusion No. 7**, above, as Claimants showed by a preponderance of the evidence that they are entitled to premium pay pursuant to Cal. Lab. Code § 226.7 for one hour at their then-current rates for 20% of the total number of rest breaks Claimants missed in violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks), they were awarded amounts to be determined.
8. With respect to **Conclusion No. 8**, above, Claimants' Eighth Cause of Action for Violation of the California Unfair Competition Act (UCL), Cal. Bus. & Prof. Code §§ 17200, was dismissed for want of prosecution, and Claimants were awarded nothing thereon.
9. With respect to **Conclusion No. 9**, above, as Claimants showed by a preponderance of the evidence that they are entitled to non-duplicative relief on their Third Cause of Action for Failure to Properly Pay Overtime Wages and For All Hours Worked (Violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 207, 216(b), and 255(a)), they were

- awarded amounts to be determined.
10. With respect to **Conclusion No. 10**, above, Claimant Javier Alvizuri was awarded penalties under the PAGA in amounts to be determined.
 11. With respect to **Conclusion No. 11**, above, Claimants were awarded waiting time penalties under Cal. Lab. Code § 203 in amounts to be determined.
 12. With respect to **Conclusion No. 12**, above, Claimants were awarded liquidated damages under Cal. Lab. Code § 1194.2 in amounts to be determined.
 13. With respect to **Conclusion No. 13**, above, Claimants were awarded non-duplicative liquidated damages under the FLSA in amounts to be determined.
 14. With respect to **Conclusion No. 14**, above, as Claimants' Fourth Cause of Action for Violation of California Labor Code §§ 226, 226.2 was dismissed for want of prosecution, they were awarded nothing thereon.
 15. Respondent was ordered to bear the administrative fees and expenses of the American Arbitration Association in an amount to be determined, and the compensation and expenses of the arbitrator in an amount to be determined.
 16. The Group II Claimants were found to be the overall prevailing parties herein.
 17. The hearing in this matter remained open until issues of amounts of damages and penalties are resolved. This award provisionally resolved all issues between the parties except as noted. This interim award remained in full force and effect until such time as a Final Award is issued.
 18. The undersigned retained jurisdiction over the Group II cases for the sole purpose of determining the amount of damages and penalties to be awarded. Counsel were to meet and confer as to these issues and submit them to the undersigned if they cannot be mutually resolved.

J. Further Findings: Damages, Penalties and Interest

Following the entry of the Interim Group II Award, the parties met and conferred with respect to all of the issues left open, reaching agreement on each and submitting their agreement to the undersigned on or about March 31, 2023. Based on a review of the parties' agreed

calculations, the following further findings are made with respect to damages (including liquidated damages), penalties and interest:

1. Miguel Monjarez

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$1,229.88
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$3,150.00
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$2,472.00
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	4,275.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$1,229.88
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$0.00
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$1,229.88
TOTAL	\$13,586.63
Interest (Wages)	\$85.09
Interest (Meal and Rest Periods)	\$18,70.17
TOTAL WITH INTEREST	\$16,041.89

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2. Alvaro Jose Cardenas

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$2,003.10
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$5,737.810
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$3,995.00
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	\$5,700.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$2,003.10
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$305.93
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$2,003.10
TOTAL	\$21,748.04
Interest (Wages)	\$830.08
Interest (Meal and Rest Periods)	\$1,999.93
TOTAL WITH INTEREST	\$24,578.04

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3. Javier Alvizuri

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$751.92
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$4,247.82
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$1,504.00
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	\$5,700.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$751.92
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$37.21
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$751.92
TOTAL	\$13,744.79
Interest (Wages)	\$231.26
Interest (Meal and Rest Periods)	\$1,373.68
TOTAL WITH INTEREST	\$15,349.73
PAGA	\$16,250.00
To LWDA (75%)	\$12,187.50
To Alvizuri (25%)	\$4,062.50
GRAND TOTAL (To Alvizuri)	\$19,412.23

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4. Francisco Hernandez

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$2,023.68
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$9,675.00
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$4,037.40
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	\$6,550.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$2,023.68
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$286.08
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$2,023.68
TOTAL	\$26,624.52
Interest (Wages)	\$812.36
Interest (Meal and Rest Periods)	\$2,992.32
TOTAL WITH INTEREST	\$30,429.21

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5. Miguel Angel Ramirez

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$701.99
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$1,742.30
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$1,429.10
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	\$5,700.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$701.99
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$120.46
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$701.99
TOTAL	\$11,097.84
Interest (Wages)	\$267.22
Interest (Meal and Rest Periods)	\$847.06
TOTAL WITH INTEREST	\$12,212.12

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6. Jose Castellanos

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$287.97
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$770.00
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$433.20
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	\$6,270.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$287.97
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$0.00
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$287.97
TOTAL	\$8,337.11
Interest (Wages)	\$65.33
Interest (Meal and Rest Periods)	\$192.79
TOTAL WITH INTEREST	\$8,595.23

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7. Jose Villanueva

Item	Amount
Violation of Cal. Lab Code § 218 and 1194 (failure to provide one-hour meal periods) (<i>See</i> , Conclusion Nos. 5, 6 above,)	\$1,136.67
Violation of Cal. Lab Code § 512(a) and IWC Wage Order No. 16-2001(10)(A) (failure to provide timely meal periods) (Conclusion No. 4.)	\$4,237.98
Violation of Cal. Lab Code § 218 and IWC Wage Order No. 5-2001(11)(A) (failure to provide 10-minute paid rest breaks)(Conclusion No. 7.)	\$2,319.779
Waiting time penalties under Cal. Lab. Code § 203 (Conclusion No. 11.)	\$7,125.00
Liquidated damages under Cal. Lab. Code § 1194.2 (Conclusion No. 12.)	\$634.61
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$1,136.67
Non-duplicative liquidated damages under the FLSA (Conclusion No. 13.)	\$287.97
TOTAL	\$17,727.39
Interest (Wages)	\$344.03
Interest (Meal and Rest Periods)	\$1,281.05
TOTAL WITH INTEREST	\$19,352.47

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FINAL ARBITRATION AWARD

1. Conclusions Nos. 1 - 14 reached by the undersigned in the Interim Group II Award and set forth above at pp. 35 - 48 are confirmed and made part of this Final Arbitration Award.
2. The Awards and Orders Nos. 1 -18 made by the undersigned in the Interim Group II Award and set forth above at pp. 48 - 50 are also confirmed and made part of this Final Award.
3. Based on the further findings numbered 1 - 7 made herein and set forth above at pp. 51 - 57, the following amounts are awarded to each of the Group II Claimants as full and final settlement of their claims against Respondents:

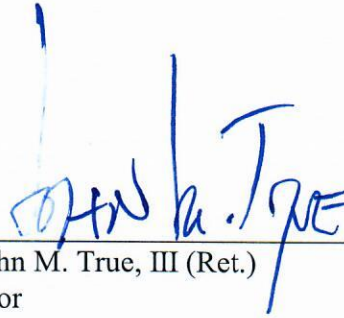
Claimant	Amount
Miguel Monjaraz	\$16,089.60
Alvaro Jose Cardenas	\$25,075.31
Javier Alvizuri	\$15,349.81
Javier Alvizuri (PAGA)	\$16,250.00
Francisco Hernandez	\$31,311.61
Miguel Angel Ramirez	\$12,403.20
Jose Cortez Castellanos	\$8,595.23
Jose Villanueva	\$19,625.62
TOTAL	\$144,500.30

4. Respondent is ordered to bear the administrative fees and expenses of the American Arbitration Association in an amount to be determined, and the compensation and expenses of the arbitrator in an amount to be determined.
5. The Group II Claimants are found to be the overall prevailing parties herein.

IT IS SO ORDERED on this April 6, 2023.

Hon. John M. True, III (Ret.)
Arbitrator

IT IS SO ORDERED on this April 6, 2023.

A handwritten signature in blue ink, appearing to read "John M. True, III", is written over a horizontal line.

Hon. John M. True, III (Ret.)
Arbitrator