

MAR 11 2021

Sherri R. Carter, Executive Officer/Clerk of Court

By: Michelle Miro, Deputy

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LOS ANGELES SUPERIOR COURT

MAR 11 2021

S. DREW

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Attorneys for Plaintiff

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

FRANCISCO RAMIREZ GONZALEZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

TOMARCO CONTRACTOR SPECIALTIES,
INC., a California Corporation; and DOES 1
through 100,

Defendants.

Case No.: 19STCV20723

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);
- (4) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);
- (5) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*); AND
- (6) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

COPY

1 Plaintiff Francisco Ramirez Gonzalez (hereinafter “Plaintiff”), on behalf of himself and
2 all others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint (“Complaint”) against Defendant Tomarco Contractor Specialties, Inc., a California
4 Corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
5 belief allege as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 204, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
10 1197, 1198, and 2698 *et. seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order
11 1”), in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant
12 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
13 violations of the California Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
19 an agent or agents within the County of Los Angeles, and/or otherwise are found within the
20 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
21 service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
27 employee. Plaintiff is a victim of Defendants’ policies and/or practices complained of herein, lost
28 money and/or property, and have been deprived of the rights guaranteed by Labor Code §§ 204,

226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198; and 2698 *et seq.*, and Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 1, which sets employment standards for the manufacturing industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by designing and manufacturing products for use in various industries, including plumbing, HVAC, and general construction and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County and the state of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 13) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Defendants are in the business of designing and manufacturing solutions for
6 product categories including but not limited to: plumbing, HVAC, electrical utilities, cabling
7 telecom, drywall, and general construction. Plaintiff has worked for Defendants as a non-exempt
8 employee from approximately September 2016 through the present (although he has been on
9 medical leave since approximately March of 2018). Plaintiff's primary job duties consisted of
10 cutting plastics, cutting metals, and bundling wires.

11 10. During Plaintiff's employment with Defendants, Defendants utilized a
12 timekeeping system which resulted in Plaintiff not being compensated for all hours actually
13 worked, whether by rounding, time-shaving, or otherwise. Specifically, Plaintiff clocked in and
14 out for his shifts by entering his employee identification number into a machine, however
15 Defendants only paid Plaintiff and other non-exempt employees in increments of a quarter of an
16 hour, so that over a period of time they are deprived of all earned minimum wages. Further, on
17 occasions when Plaintiff worked over eight hours in a workday and/or forty hours in a workweek,
18 Defendants' timekeeping policies/practices have deprived him of all overtime wages earned. Due
19 to Defendants' timekeeping practices that failed to compensate for all hours worked, Plaintiff was
20 not compensated for all required minimum and overtime wages.

21 11. Defendants' meal period policies/practices fail to provide Plaintiff and other non-
22 exempt employees with all legally compliant meal periods because they fail to provide Plaintiff
23 and other non-exempt employees with a timely meal period commencing before the end of the
24 fifth hour of work. Specifically, Plaintiff's and other non-exempt employees' meal periods are
25 regularly "late" (i.e., starting after the completion of the fifth hour of work). For example, these
26 employees often begin work at approximately 3:30 a.m., but are not provided a meal period until
27 approximately 10:00 a.m. Moreover, because Plaintiff and other non-exempt employees were
28 required to remain on Defendants' premises during their meal periods, Defendants failed to

1 relinquish control over how employees spent their time during their meal periods in violation of
2 California law. Defendants have failed to compensate Plaintiff with the required meal period
3 premium for each workday in which he experienced a meal period violation as mandated by Labor
4 Code § 226.7. Upon information and belief, during at least a portion of the putative class period,
5 Defendants maintained no payroll code for paying rest period premiums under Labor Code §
6 226.7.

7 12. Plaintiff was not authorized and permitted to take all required and legally-
8 compliant rest periods due to Defendants' rest period policies/practices. Specifically, because
9 Plaintiff and other non-exempt employees were required to remain on Defendants' premises
10 during their rest periods, Defendants failed to relinquish control over how employees spent their
11 time during their rest periods in violation of California law. On those occasions when Plaintiff
12 was not provided with all legally-required and compliant rest periods to which he was entitled,
13 Defendants failed to compensate Plaintiff with the required rest period premium for each workday
14 in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon
15 information and belief, during at least a portion of the putative class period, Defendants
16 maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

17 **CLASS ACTION ALLEGATIONS**

18 13. **Class Definitions:** Plaintiff bring this action on behalf of themselves and the
19 following Classes pursuant to § 382 of the Code of Civil Procedure:

20 a. The Overtime Class consists of all of Defendants' current and former non-exempt
21 employees in California who worked more than eight hours per day and/or forty
22 hours per week, and who were subject to Defendants' timekeeping
23 policies/practices, during the four years immediately preceding the filing of the
24 Complaint through the present.

25 b. The Minimum Wage Class consists of all of Defendants' current and former non-
26 exempt employees in California who were subject to Defendants' timekeeping
27 policies/practices, during the four years immediately preceding the filing of the
28 Complaint through the present.

c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of the Complaint through the present.

d. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of the Complaint through the present.

14. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

15. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members, including, without limitation:

i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

iv. Whether Defendants provided meal and/or rest period premium payments for non-compliant meal and/or rest periods; and

16. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual Class member, such as Defendants' uniform
3 calculation of the regular rate of pay for overtime purposes, rest period policies/practices, and
4 meal period policies/practices. As such, the common questions predominate over individual
5 questions concerning each individual class member's showing as to their eligibility for recovery
6 or as to the amount of their damages.

7 17. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
8 Plaintiff was employed by Defendants as non-exempt employee in California during the statute(s)
9 of limitations period applicable to each cause of action pled in the Complaint. As alleged herein,
10 Plaintiff, like the members of the Classes, was deprived of all earned overtime and minimum
11 wages, was not authorized and permitted to take all legally-compliant rest periods, and was not
12 provided all required meal periods.

13 18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
14 to represent fairly and adequately the interests of the members of the Classes. Moreover,
15 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
16 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
17 and-hour class actions in state and federal courts in the past and are committed to vigorously
18 prosecuting this action on behalf of the members of the Classes.

19 19. **Superiority:** The California Labor Code is broadly remedial in nature and serves
20 an important public interest in establishing minimum working conditions and standards in
21 California. These laws and labor standards protect the average working employee from
22 exploitation by employers who have the responsibility to follow the laws and who may seek to
23 take advantage of superior economic and bargaining power in setting onerous terms and
24 conditions of employment. The nature of this action and the format of laws available to Plaintiff
25 and members of the Classes make the class action format a particularly efficient and appropriate
26 procedure to redress the violations alleged herein. If each employee were required to file an
27 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
28 would be able to exploit and overwhelm the limited resources of each individual plaintiff with

1 their vastly superior financial and legal resources. Moreover, requiring each member of the
2 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
3 employees who would be disinclined to file an action against their former and/or current employer
4 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
5 employment. Further, the prosecution of separate actions by the individual class members, even
6 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
7 with respect to the individual class members against Defendants herein; and which would
8 establish potentially incompatible standards of conduct for Defendants; and/or legal
9 determinations with respect to individual class members which would, as a practical matter, be
10 dispositive of the interest of the other class members not parties to adjudications or which would
11 substantially impair or impede the ability of the class members to protect their interests. Further,
12 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
13 individual prosecution considering all of the concomitant costs and expenses attending thereto.
14 As such, the Classes identified in Paragraph 13 are maintainable as a Class under § 382 of the
15 Code of Civil Procedure.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 **(AGAINST ALL DEFENDANTS)**

19 20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 21. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
21 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
22 compensation for hours worked, and provide a private right of action for the failure to pay all
23 overtime compensation for overtime work performed.

24 22. At all times relevant herein, Defendants were required to properly compensate
25 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
26 hours worked pursuant to Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an
27 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
28 for work in excess of eight hours per workday and/or in excess of forty hours of work in the

workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

23. Defendants' policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 1.

24. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

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1 27. California Labor Code § 1198 makes unlawful the employment of an employee
2 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
3 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
4 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
5 amount equal to the wages due and interest thereon.

6 28. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
7 members of the Minimum Wage Class seek penalties pursuant to Wage Order 1 § 20(A) and
8 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
9 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;
10 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages
11 and/or penalties pursuant to California Labor Code § 558(a).

12 **THIRD CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 30. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
17 establish the right of employees to be authorized and permitted to take a paid rest period of at
18 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

19 31. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
20 of the Rest Period Class to take all required and legally-compliant rest periods and failed to pay
21 rest period premium wages when rest periods were not authorized and permitted.

22 32. The foregoing violations create an entitlement to recovery by Plaintiff and
23 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
24 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
25 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

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1 **FOURTH CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiff and members of the Meal Period Class, with all legally-compliant meal periods
8 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
9 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
10 of the Meal Period Class at their respective regular rates of pay, in accordance with California
11 Labor Code §§ 204, 210, 226.7, and 512.

12 35. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 1,
14 including interest thereon, statutory penalties, civil penalties, and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

18 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 37. Defendants have engaged and continue to engage in unfair and/or unlawful
20 business practices in California in violation of California Business and Professions Code § 17200
21 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
22 periods and authorize and permit all required rest periods, and pay premium payments for missed
23 or non-compliant meal and rest periods.

24 38. Defendants' utilization of these unfair and/or unlawful business practices deprived
25 Plaintiff and continues to deprive members of the Classes of compensation to which they are
26 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
27 over Defendants' competitors who have been and/or are currently employing workers and
28 attempting to do so in honest compliance with applicable wage and hour laws.

39. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seek full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

40. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

41. Plaintiff was compelled to retain the services of counsel to file this court action to protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

43. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226, and \$1,000.00 for each subsequent violation pursuant to

Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to authorize and permit Plaintiff and other aggrieved employees their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198; and
- d. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, 558 and 1198;

44. On or about January 4, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the California Labor Code identified in Paragraph 43 (a)-(d). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

45. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), including all current and former non-exempt

employees who worked for Defendants in California between June 14, 2018 (one year prior to Plaintiff's filing his original complaint in this matter) and the present.

46. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interest and the interests of other aggrieved piece rate employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure

1 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
2 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
3 unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
4 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
5 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
6 employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226, and
7 \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay
8 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
9 employee per pay period for those violations of the Labor Code for which no civil penalty is
10 specifically provided, based on the violations of Labor Code sections identified in Paragraph 43
11 (a)-(d) above.

12 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor
13 Code § 218.6 and Civil Code §§ 3287 and 3289;

14 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code
15 §§ 226, 1194 *et seq.*, 2802(c), and Code of Civil Procedure § 1021.5; and

16 12. For such other and further relief the Court may deem just and proper.

17
18 Dated: March 11, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

19
20 By:



Paul K. Haines
Attorneys for Plaintiff

21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

24
25 Dated: March 11, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

26
27 By:



Paul K. Haines
Attorneys for Plaintiff

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PROOF OF SERVICE

Francisco Ramirez Gonzalez v. Tomarco Contractor Specialties, Inc.
Los Angeles County Superior Court Case No. 19STCV20723

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On March 11, 2021, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Alan Freisleben, Esq.
Email: freisleben@flg-llp.com
FREISLEBEN LAW GROUP
18881 Von Karman Ave., Ste. 1620
Irvine, California 92612
Attorneys for Defendant TOMARCO CONTRACTOR SPECIALTIES, INC.

☒ (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 11, 2021, at El Segundo, California.



Jackie Hernandez