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Attorneys for Plaintiff TYRUS HARDSON and GABRIEL CAMACHO,
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

TYRUS HARDSON and GABRIEL
CAMACHO, on behalf of the general public as
private attorney general,

Plaintiffs,

v.

GARDNER TRUCKING INC., dba CRST
TRUCKING, a California Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff TYRUS HARDSON and GABRIEL CAMACHO (“Plaintiffs”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants GARDNER TRUCKING INC., dba CRST TRUCKING.; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendants: (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage statements; and (f) failing to reimburse necessary business expenses. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

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

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

5 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
6 Civil Procedure section 395. Defendants are doing business throughout California, including but
7 not limited to San Bernardino County, and each Defendant is within the jurisdiction of this Court
8 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
9 and all other aggrieved employees within the State of California. Defendants employ numerous
10 aggrieved employees in in the State of California.

11 6. On information and belief, Defendants have conducted business within the State of
12 California during the purported liability period and continue to conduct business throughout the
13 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiffs, and the
14 similarly situated non-exempt aggrieved employees within California.

15 7. The California Superior Court also has jurisdiction in this matter because on
16 information and belief there are no federal questions at issue, as the issues herein are based solely
17 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
18 California Code of Civil Procedure, the California Civil Code, and the California Business and
19 Professions Code.
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21 8. During the statutory liability period and continuing to the present, Defendants have
22 failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

23 9. During the statutory liability period and continuing to the present, Defendants have
24 failed to provide reimburse business expenses incurred by Plaintiff and Aggrieved Employees.

25 10. Plaintiffs on behalf of the general public as private attorneys general and all other
26 aggrieved employees bring this action pursuant to Labor Code 2698, *et. seq.*, for violations
27 enumerated under 2699.5 as follows: sections 201-203, 226, 226.3, 226.7, 510, 512, 1194, 1174,
28 1174.5, 1175, 1197, 1197.1, 2802, and seeking penalties, interest, attorneys' fees and costs.

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III. PARTIES

A. Plaintiff

11. Plaintiff, TYRUS HARDSON, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in approximately July 2020 as a Non-Exempt Employee and worked during the liability period for Defendants' as a driver, until Plaintiff's separation from Defendants' employ in approximately October 2020.

12. Plaintiff, GABRIEL CAMACHO, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in approximately May 2019 as a Non-Exempt Employee and worked during the liability period for Defendants' as mobile mechanic, until Plaintiff's separation from Defendants' employ in approximately July 2020.

13. As Defendants' employees, Plaintiffs, and all other aggrieved employees were regularly required to and subsequently suffered various labor code violations related but not limited to:

- a) Failure to pay minimum and overtime wages;
- b) Failure to provide meal periods;
- c) Failure to authorize and permit rest periods;
- d) Failure to timely pay wages upon separation;
- e) Failure to reimbursed for expenses; and
- f) Failure to provide accurate itemized wage statements.

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

B. Defendants

15. Defendants GARDNER TRUCKING INC., dba CRST TRUCKING provides trucking and logistics services to various businesses in California. Plaintiffs estimate there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

16. Other than identified herein, Plaintiffs are unaware of the true names, capacities,

relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

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

IV. GENERAL ALLEGATIONS

18. At all times set forth herein, Defendants employed Plaintiffs and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

19. Plaintiffs are informed and believe Aggrieved Employees have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

20. Plaintiffs are informed and believe that all Aggrieved Employees are citizens of the state of California.

21. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties related to Defendants trucking and logistics business.

22. Plaintiffs are informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

1 23. During the relevant time frame, Defendants compensated Plaintiffs and Aggrieved
2 Employees based upon an hourly rate.

3 24. On information and belief, during the relevant time frame, Plaintiff Camacho and
4 Aggrieved Employees frequently worked well over eight (8) hours in a day and forty (40) hours
5 in a work week.

6 25. During the relevant time frame, Defendants failed to compensate Plaintiffs and
7 Aggrieved Employees for all time worked as a result of Defendants' unlawful rounding policies
8 related to the recordation of employees' time. Defendants' unlawful rounding policies fails to
9 capture all work time performed by Plaintiff and Aggrieved Employees, which resulted over time,
10 into a disproportionate underpayment of minimum and overtime wages. Furthermore, Plaintiff
11 Camacho and other Aggrieved Employees were also required to perform work related activities
12 after having clocked out for their shifts at the request of Defendants management in order to finish
13 their work tasks prior to heading home. This also resulted over time in a disproportionate
14 underpayment of minimum and overtime wages as Defendants failed to compensate for work
15 performed after employees clocked out for the day.

16 26. Plaintiff Camacho and the Aggrieved Employees were regularly required to work
17 shifts in excess of five hours without being provided a lawful meal period and over ten hours in a
18 day without being provided a second lawful meal period as required by law.

19 27. Indeed, during the relevant time, as a consequence of Defendants' staffing and
20 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
21 Defendants frequently failed to provide Plaintiff Camacho and the Aggrieved Employees timely,
22 legally compliant uninterrupted 30-minute meal periods on shifts over five hours as required by
23 law.

24 28. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
25 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
26 to provide Plaintiff Camacho and the Aggrieved Employees legally compliant second meal periods
27 on shifts over ten hours as required by law.
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1 29. On information and belief, Plaintiff Camacho and Aggrieved Employees did not
2 waive their rights to meal periods under the law.

3 30. Plaintiff Camacho and the Aggrieved Employees were not provided with valid
4 lawful on-duty meal periods.

5 31. Despite the above-mentioned meal period violations, Defendants failed to
6 compensate employees one additional hour of pay at their regular rate as required by California
7 law when meal periods were not timely or lawfully provided in a compliant manner.

8 32. Plaintiff Camacho is informed and believes, and thereon alleges, that Defendants
9 know, should know, knew, and/or should have known that Plaintiff and the other Aggrieved
10 Employees were entitled to receive premium wages based on their regular rate of pay under Labor
11 Code §226.7 but were not receiving such compensation.

12 33. In addition, during the relevant time frame, Plaintiff Camacho and the Non-Exempt
13 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
14 period for every four hours worked or major fraction thereof, which is a violation of the Labor
15 Code and IWC wage order.

16 34. Defendants maintained and enforced scheduling practices, policies, and imposed
17 work demands that frequently required Plaintiff Camacho and Aggrieved Employees to forego
18 their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction
19 thereof. Such requisite rest periods were not timely authorized and permitted as a result of
20 Defendants' failure to provide relief for Plaintiffs and Aggrieved Employees to take their lawfully
21 required breaks.

22 35. Despite the above-mentioned rest period violations, Defendants did not compensate
23 Plaintiff Camacho, and on information and belief, did not pay Aggrieved Employees one
24 additional hour of pay at their regular rate as required by California law, including Labor Code
25 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
26 not authorized and permitted.

27 36. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
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1 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
2 thereof for resignations without prior notice as the case may be) they had a duty to accurately
3 compensate Plaintiffs and Aggrieved Employees for all wages owed including minimum wages,
4 overtime wages, meal and rest period premiums, and that Defendants had the financial ability to
5 pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so
6 in part because of the above-specified violations.

7 37. During the relevant time frame, Defendants failed to provide accurate, lawful
8 itemized wage statements to Plaintiffs and the Aggrieved Employees. On information and belief,
9 Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and
10 Labor Code §226 including Labor Code § 2699 (a)(9) by failing to list the applicable rates and
11 hours with respect to Plaintiffs' overtime pay on wage statements issued to Plaintiffs and
12 Aggrieved Employees. Rather, whenever overtime wages were paid to the employee, the pay stubs
13 only shows a flat amount without any applicable rate and hours to show how the overtime pay
14 amount was calculated.

15 38. Defendants also omitted an accurate itemization of total hours worked on employee
16 wage statements, including premiums due and owing for meal and rest period violations, gross pay
17 and net pay figures from Plaintiff and the Aggrieved Employees' wage statements.

18 39. During the relevant time frame, Defendants failed to adequately reimburse
19 Plaintiffs and Aggrieved Employees for business expenditures incurred for the use of personal
20 cellphones as Plaintiffs and Aggrieved Employees used their personal cellphones to perform their
21 daily work duties. Such business expenditures incurred were incurred in direct consequence of
22 Plaintiff's and Aggrieved Employees' duties pursuant to Labor Code § 2802. For instance, Plaintiff
23 Hardson used his personnel cellphone to stay in contact with Defendants management to get
24 updates on their delivery routes and to call Defendants' various customers in order to confirm
25 delivery information.

26 40. Upon information and belief, Defendants failed to keep accurate records pursuant
27 to Labor Code § 1174.5.
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1 41. Upon information and belief, Defendants knew and or should have known that it is
2 improper to implement policies and commit unlawful acts such as:

- 3 (a) failing to pay minimum and overtime wages;
4 (b) failing to provide meal periods;
5 (c) failing to authorize and permit rest breaks;
6 (d) failing to timely pay wages;
7 (e) failing to provide accurate itemized wage statements;
8 (f) failing to reimburse necessary business expenses; and
9 (g) failing to maintain accurate records.

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

14 **V. REPRESENTATIVE CLAIMS**

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

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

18 44. On January 21, 2021 and March 26, 2021 Plaintiffs complied with notice
19 requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is
20 attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the
21 claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed
22 and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed
23 with this action in a representative capacity. The substance and violations set forth in this
24 Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this
25 PAGA Representative Action Complaint to the LWDA.

26 45. Plaintiffs are aggrieved employees as defined in Labor Code Section 2699(a).
27 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
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1 Employees of Defendants.

2 46. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for
3 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
4 including without limitation Labor Code section 201-203, 226, 226.3, 226.7, 510, 512, 1194, 1174,
5 1174.5, 1175, 1197, 1197.1 2802, and, 2698 *et seq.*, applicable IWC Wage Orders and California
6 Code of Regulations, Title 8, section 11000 *et. seq.*

7 47. At all times relevant, Plaintiffs and all other aggrieved employees regularly
8 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
9 rest break requirements of the applicable IWC wage order and the Labor Code.

10 48. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
11 overtime wages owed as discussed above Defendants' failure to account for all work time
12 performed as a result of Defendants' unlawful rounding policies. Defendants also failed to pay
13 overtime wages to Plaintiff Camacho and Aggrieved Employees for off-the-clock work performed
14 at the request of Defendants' management requiring them to clock out for the day and to finish
15 their work tasks prior to going home. Therefore, Defendants violated section 510, and 1194 by not
16 compensating its Non-Exempt Employees for work performed in excess of eight hours (8) in a day
17 or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime
18 compensation at the rate of one and one-half times the regular rate of pay for all hours worked in
19 excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime compensation
20 twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess
21 of eight (8) hours in a day on the seventh day of work in a particular work week.

22 49. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
23 accurately pay at least minimum wages due as a result Defendants' unlawful rounding practices,
24 failure to compensate Plaintiffs and Aggrieved Employees for off the clock work performed as
25 described above.

26 50. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
27 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
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1 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
2 an employee for a work period of more than five (5) hours without providing a meal break of not
3 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
4 employer may not employ an employee for a work period of more than ten (10) hours per day
5 without providing the employee with a second meal period of not less than thirty (30) minutes,
6 except that if the total hours worked is no more than twelve (12) hours, the second meal period
7 may be waived by mutual consent of the employer and the employee only if the first meal period
8 was not waived.

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

16 52. Plaintiff Camacho, and on information and belief, all aggrieved employees, were
17 systematically not permitted or authorized to take ten minute rest periods for every four hours
18 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
19 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
20 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
21 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
22 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
23 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
24 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
25 applicable IWC Wage Order.

26 53. Defendants also willfully violated Labor Code sections 201-203 by failing to
27 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
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1 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
2 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
3 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
4 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
5 The penalty cannot exceed 30 days of wages.

6 54. Plaintiffs and all other aggrieved employees who were separated from employment
7 are entitled to compensation for all forms of wages earned, including but not limited to
8 compensation for minimum and overtime wages, and for non-provided meal and rest periods, but
9 to date have not received such compensation, therefore entitling them to penalties under PAGA
10 for violations of Labor Code sections 201-203.

11 55. On information and belief, Defendants willfully failed to pay all wages due and
12 owing upon separation from employment. These wages include minimum and overtime wages,
13 and meal and rest period premiums.

14 56. California Labor Code section 226(a) sets forth the following "An employer,
15 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
16 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if
17 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
18 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j),
19 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
21 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
22 of the period for which the employee is paid, (7) the name of the employee and only the last four
23 digits of his or her social security number or an employee identification number other than a social
24 security number, (8) the name and address of the legal entity that is the employer and, if the
25 employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and
26 address of the legal entity that secured the services of the employer, and (9) all applicable hourly
27 rates in effect during the pay period and the corresponding number of hours worked at each hourly
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1 rate by the employee.”

2 57. On information and belief, Defendants have failed to record all or some of the items
3 delineated in Industrial Wage Orders and Labor Code §226, including Labor Code § 226 (a)(9) by
4 failing to list the applicable rates and hours with respect to Plaintiffs’ overtime pay on wage
5 statements issued to Plaintiffs and Aggrieved Employees. Rather, whenever overtime wages were
6 paid to the employee, the pay stubs only shows a flat amount without any applicable rate and hours
7 to show how the overtime pay amount was calculated.

8 58. Defendants also omitted an accurate itemization of total hours worked on employee
9 wage statements, including premiums due and owing for meal and rest period violations, gross pay
10 and net pay figures from Plaintiff and the Aggrieved Employees’ wage statements.

11 59. Plaintiff and the Aggrieved Employees have been injured as they were unable to
12 determine whether they had been paid correctly for all hours worked per pay period among other
13 things.

14 60. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
15 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
16 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
17 for each violation in a subsequent citation, for which the employer fails to provide the employee a
18 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

19 61. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
20 Employees for necessary expenditures incurred in direct consequences of the discharge of his or
21 her duties. As a necessary part of employment, Plaintiff and on information and belief Aggrieved
22 Employees, were not adequately reimbursed by Defendants for expenses related to all expenses
23 incurred as results of personal cell phone usage, which was incurred as a direct consequence of the
24 discharge of duties by Plaintiffs and Aggrieved Employees. Despite these realities of the job,
25 Defendants failed to provide reimbursements for the use of personal cell phones necessary to carry
26 out their job duties.

27 62. Additionally, Defendants have no accurate records relating to aggrieved
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1 employees' work periods, total daily hours worked, total hours worked per payroll period and
2 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate
3 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

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

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

9 **PRAYER FOR RELIEF**

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

- 11 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 12 2. For reasonable attorneys' fees and costs; and
- 13 3. For such other and further relief as the Court deems proper.
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16 Dated: March 26, 2021

JAMES HAWKINS APLC

17 By:

18 JAMES R. HAWKINS, ESQ.
19 GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.

20 Attorneys for Plaintiffs TYRUS HARDSON
21 and GABRIEL CAMACHO on behalf of the
22 general public as private attorney general.

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