

ORIGINAL

FILED

Superior Court of California
County of Los Angeles

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Plaintiff, ERNESTO MARTINEZ, on behalf
of himself and all others similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

[UNLIMITED JURISDICTION]

ERNESTO MARTINEZ, an individual, on
behalf of himself and all others similarly
situated,

Plaintiffs,

vs.

DIAMOND ENVIRONMENTAL
SERVICES, LP., a California Limited
Partnership ; and DOES 1 THROUGH 50,
inclusive,

Defendants

Case No.: **21STCV16449**

CLASS ACTION COMPLAINT

- (1) WAGE & HOUR - FAILURE TO
PAY MINIMUM WAGES
- (2) WAGE & HOUR - FAILURE TO
PAY PREMIUM WAGES/
OVERTIME
- (3) FAILURE TO PROVIDE MEAL
BREAKS;
- (4) FAILURE TO PROVIDE REST
PERIODS;
- (5) FAILURE TO PAY UNIFORM
MAINTENANCE;
- (6) FAILURE TO REIMBURSE
BUSINESS EXPENSES;
- (7) FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS (LABOR CODE
§226);
- (8) FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS (LABOR CODE
§226.3);
- (9) UNLAWFUL WITHHOLDING OF

BY FAX

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) WAGES;
) (10) WAITING TIME
) PENALTIES;
) (11) PRIVATE ATTORNEY
) GENERAL ACT (LABOR CODE
) §2699, ET SEQ.; AND,
) (12) UNFAIR BUSINESS
) PRACTICES

) [DEMAND FOR JURY TRIAL]
)
)
)
)

Plaintiff ERNESTO MARTINEZ ("PLAINTIFF"), an individual on behalf of himself and all others similarly situated, hereby files this Complaint against Defendant DIAMOND ENVIRONMENTAL SERVICES, LP., a California Limited Partnership ("DEFENDANT"); and DOES 1 to 50. PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as follows:

I. INTRODUCTION

1. This is a class action pursuant to Code of Civil Procedure §382.
2. This is a civil action seeking recovery for DEFENDANT's violations of California Labor Code ("Labor Code") §§1194, et seq., Labor Code §§200, et seq., Labor Code §§500, et seq., Labor Code §2802, Labor Code §§2698, et seq., California Business and Professions Code ("B&PC") §§17200, et seq., California, and related common law principles.
3. PLAINTIFF's action seeks monetary damages, including full restitution from DEFENDANT as a result of DEFENDANT's unlawful, fraudulent and/or unfair business practices.

1 4. The acts complained of herein occurred, occur, and will occur, at least in part, within the
2 time period from four (4) years preceding the filing of the original Complaint herein, up to and
3 through the time of trial for this matter.

4 RELEVANT JOB TITLES

5 5. The relevant job titles in this action are all DEFENDANT's non-exempt employees,
6 including but not limited to Plumbing positions, field positions, loaders, delivery, portable toilet
7 servicers, and the like (hereinafter including DEFENDANT's job positions with substantially
8 similar titles and duties) and;

9 6. DEFENDANT's employees in the relevant job titles are non-exempt and are paid by
10 DEFENDANT on the basis of hourly rates.

11 7. The obligations and responsibilities of DEFENDANT's employees in the relevant job
12 titles, respectively, are virtually identical from region to region, district to district, and employee
13 to employee. Any differences in job activities between the different individuals in these positions
14 were and are legally insignificant to the issues presented by this action.
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16 SUMMARY OF CLAIMS

17 8. With regard to DEFENDANT's employees in the relevant job titles, DEFENDANT has:

- 18 a. Failed to pay proper wages;
19 b. Failed to pay overtime wages;
20 c. Failed to authorize and permit compliant meal periods;
21 d. Failed to authorize and permit paid rest periods;
22 e. Failed to reimburse business expenses;
23 f. Failed to provide property itemized wage statements;
24 g. Unlawfully withheld wages;
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1 h. Incurred waiting time penalties; and

2 i. Conducted unfair business practices.

3 **II. PARTIES**

4 **A. PLAINTIFF**

5 9. Plaintiff ERNESTO MARTINEZ ("PLAINTIFF"), is over eighteen (18) and is now and/or
6 at all times mentioned in this Complaint was a resident of the State of California.

7 10. PLAINTIFF was hired on or around September 2016 as a plumber. His duties included,
8 but were not limited to, cleaning, loading and unloading portable toilets. PLAINTIFF was
9 terminated on February 14, 2020.

10 **B. DEFENDANTS**

11 11. Defendant DIAMOND ENVIRONMENTAL SERVICES, LP. ("DEFENDANT") is now
12 and/or at all times mentioned in this Complaint, was a California Limited Partnership and the
13 owner and operator of an industry, business and/or facility licensed to do business and actually
14 doing business in the State of California. PLAINTIFF is informed and believes and, on this basis,
15 alleges that DEFENDANT operates in the whole of Southern California with eight locations and
16 provides services related to pumping and porta-potty rental, temporary fence, temporary power,
17 emergency services, dumpsters and storage rentals.

18 **C. DOES 1 TO 50, INCLUSIVE**

19 12. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint were
20 licensed to do business and/or actually doing business in the State of California.

21 13. PLAINTIFF does not know the true names and capacities, whether individual partner or
22 corporate, of DOES 1 to 50, inclusive and for that reason DOES 1 to 50 are sued under such
23 fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.
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1 14. PLAINTIFF will seek leave of court to amend this Complaint to allege such names and
2 capacities as soon as they are ascertained.

3 D. ALL DEFENDANTS

4 15. DEFENDANTS, and each of them, are now and/or at all times mentioned in this Complaint
5 were in some manner legally responsible for the events, happening and circumstances alleged in
6 this Complaint.

7 16. DEFENDANTS, and each of them, proximately subjected PLAINTIFF to the unlawful
8 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

9 17. PLAINTIFF is informed and believes and thereon alleges that each DEFENDANTS named
10 in this Complaint (including DOES) was at all times herein mentioned and now is the agent,
11 servant and employee of the other defendants herein, and vice versa, and was at all such times
12 acting within the course and scope of said agency and employment and with the consent and
13 permission of each of the other co-defendants, and each of the defendants herein ratified each of
14 the acts of each of the other co-defendants, and each of them.

15 18. DEFENDANTS, and each of them, are now and/or at all times mentioned in this Complaint
16 were members of and/or engaged in a joint venture, partnership and common enterprise, and were
17 acting within the course and scope of, and in pursuance of said joint venture, partnership and
18 common enterprise.

19 20 19. DEFENDANTS, and each of them, at all times mentioned in this Complaint concurred and
21 contributed to the various acts and omissions of each and every one of the other DEFENDANTS
22 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.
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1 20. DEFENDANTS, and each of them, at all times mentioned in this Complaint approved of,
2 condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this
3 Complaint.

4 21. DEFENDANTS, and each of them, at all times mentioned in this Complaint aided and
5 abetted the acts and omissions of each and every one of the other DEFENDANTS thereby
6 proximately causing the damages alleged in this Complaint.

7 22. PLAINTIFF is informed and believes and thereon alleges that each and every act and
8 omission alleged herein was performed by, and/or attributable to, all DEFENDANTS, each acting
9 as agents and/or employees, and/or under the direction and control of each of the other
10 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
11 agency, employment and/or direction and control.

12 23. DEFENDANTS and each of them, proximately subjected PLAINTIFF to the unlawful
13 practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

14
15 E. COMMON FACTS

16 24. PLAINTIFF and other similarly situated employees have not been provided, during all the
17 liability periods relevant to this Complaint, accurate wages on account of PLAINTIFF's inaccurate
18 accounting and computation of regular time wages and overtime wages, improper meal and rest
19 periods, failed to pay or provide reimbursement of business expenses, and other labor code
20 violations.

21 25. PLAINTIFF and other similarly situated employees have not been paid, during all the
22 liability periods relevant to this Complaint, expenses for the maintenance of their uniforms and
23 other business-related expenses incurred for the benefit of DEFENDANT.
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1 26. DEFENDANT unlawfully withheld wages from PLAINTIFF and other similarly situated
2 employees.

3 27. DEFENDANT failed to timely pay all final wages upon termination or resignation of
4 PLAINTIFF and others similarly situated.

5 28. The actual employment practices in place at DEFENDANT'S facilities were masked by
6 policies which were routinely not followed with full knowledge of DEFENDANT.

7 29. As a direct and proximate result of the unlawful actions of DEFENDANT, PLAINTIFF
8 and other similarly situated employees have suffered and continue to suffer from loss of earnings
9 in amounts as yet unascertained, but subject to proof at trial in amounts in excess of the jurisdiction
10 of this Court.

11 **III. JURISDICTION AND VENUE**

12 30. The California Superior Court has jurisdiction in this matter due to DEFENDANT'S
13 violations of Labor Code §210, et seq., Labor Code §500, et seq., Labor Code §1194, B&PC
14 §17200, et seq., the applicable Wage Orders issued by the California Industrial Welfare
15 Commission (hereinafter, the "IWC Wage Orders"), and related common law principles.
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17 31. The California Superior Court also has jurisdiction in this matter because both the
18 individual and aggregate monetary damages and restitution sought herein exceed the minimal
19 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

20 32. The California Superior Court likewise has jurisdiction over all DEFENDANTS because,
21 based on information and belief, DEFENDANTS are either citizens of California, have sufficient
22 minimum contacts in California, or otherwise intentionally avail themselves of the California
23 market so as to render the exercise of jurisdiction over them by the California Court consistent
24 with traditional notions of fair play and substantial justice.
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33. Venue is proper in Los Angeles County pursuant to CCP §395(a) and CCP §395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each DEFENDANT either is found, maintains office, transacts business, and/or has an agent therein.

34. Labor Code § 2699 et seq., PAGA, authorizes aggrieved employees to sue directly for various civil penalties under the Labor Code. PLAINTIFF timely provided notice on May 3, 2019 to the Labor and Workforce Development Agency ("LWDA") and to DEFENDANT, pursuant to Labor Code §2699.3.

IV. CLASS ACTION ALLEGATIONS

35. CCP §382 provides in pertinent part: "...[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

36. PLAINTIFF brings this suit as a class action pursuant to CCP §382, on behalf of individuals who are entitled to the monies unlawfully withheld by DEFENDANT.

37. The putative classes PLAINTIFF will seek to certify are currently composed of and defined as follows:

- a. All individuals employed and formerly employed by DEFENDANTS in California in the relevant job titles during the appropriate time period whom DEFENDANTS failed to properly pay minimum wages (hereinafter, the "Minimum Wage Class")
- b. All individuals employed and formerly employed by DEFENDANTS in California in the relevant job titles during the appropriate time period whom DEFENDANTS failed to properly pay overtime wages (hereinafter, the "Overtime Class");

- 1 c. All individuals employed and formerly employed by DEFENDANTS in California in
2 the relevant job titles during the appropriate time period whom DEFENDANTS failed
3 to authorize and permit the legally requisite meal periods (hereinafter, the "Meal Period
4 Class");
- 5 d. All individuals employed and formerly employed by DEFENDANTS in California in
6 the relevant job titles during the appropriate time period whom DEFENDANTS failed
7 to authorize and permit the legally requisite rest periods (hereinafter, the "Rest Period
8 Class");
- 9 e. All individuals employed and formerly employed by DEFENDANTS in California in
10 the relevant job titles during the appropriate time period whom DEFENDANTS failed
11 to pay uniform maintenance (hereinafter, the "Uniform Class");
- 12 f. All individuals employed and formerly employed by DEFENDANTS in California in
13 the relevant job titles during the appropriate time period whom DEFENDANTS failed
14 to fully reimburse work expenses (hereinafter, the "Reimbursement Class");
- 15 g. All individuals employed and formerly employed by DEFENDANTS in California in
16 the relevant job titles during the appropriate time period whom DEFENDANTS failed
17 to provide accurate itemized wage statements under Labor Code §226 (hereinafter, the
18 "§226 Wage Statement Class);
- 19 h. All individuals employed and formerly employed by DEFENDANTS in California in
20 the relevant job titles during the appropriate time period whom DEFENDANTS failed
21 to provide accurate itemized wage statements under Labor Code §226.3 (hereinafter, the
22 "§226.3 Wage Statement Class);
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1 i. All individuals employed and formerly employed by DEFENDANTS in California in
2 the relevant job titles during the appropriate time period whom DEFENDANTS
3 unlawfully withheld wages from (hereinafter, the "Withheld Wage Class");

4 j. All individuals formerly employed by DEFENDANTS in California in California in the
5 relevant job titles during the appropriate time period whom DEFENDANTS willfully
6 failed to pay any and all wages (hereinafter, the "LC 201 Class")

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8 38. The "Minimum Wage Class," Overtime Class," "Meal Period Class," "Rest Period Class,"
9 "Uniform Class," "Reimbursement Class," "§226 Wage Statement Class," "§226.3 Wage
10 Statement Class," "Withheld Wage Class," and the "LC 201 Class" are hereinafter collectively
11 referred to as the "CLASSES."

12 39. Throughout discovery in this litigation, PLAINTIFF may find it appropriate and/or
13 necessary to amend the definition of the CLASSES. In any event, PLAINTIFF will formally define
14 and designate a class definition at such time when PLAINTIFF seeks to certify the CLASSES
15 alleged herein.

16 40. Numerosity (CCP §382):

17 a. The potential quantity of members of the CLASSES as defined is so numerous that
18 joinder of all members is unfeasible and impractical.

19 b. The disposition of the claims of the members if the CLASSES through this class
20 action will benefit both the parties and this Court.

21 c. The quantity of members of the CLASSES is unknown to PLAINTIFF at this time;
22 however, it is estimated that the membership of the CLASSES numbers greater than
23 150 individuals;
24

25 d. The quantity and identity of such membership is readily ascertainable via inspection of

DEFENDANTS' records.

41. Superiority (CCP §382): The nature of this action and the nature of the laws available to PLAINTIFF make the use of the class action format particularly efficient and the appropriate procedure to afford relief to PLAINTIFF for the wrongs alleged herein, as follows:

- a. California has a public policy which encourages the use of the class action device;
- b. By establishing a technique whereby, the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;
- c. This case involves large corporate DEFENDANT and a large number of individual Class members with many relatively small claims and common issues of law and fact. The potential class is a significant number because PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT employed at any one time, approximately over fifty (50) hourly employees in all facilities, buildings, communities and retail centers, with a total class estimated to be significantly over one hundred, fifty (150) employees in the past four years - there are numerous former employees who were subjected to the same illegal payroll practices or policies. Joinder of all former employees individually would be impractical;
- d. If each individual member of the CLASSES was required to file an individual lawsuit, the large corporate DEFENDANT would necessarily gain an unconscionable advantage because DEFENDANT would be able to exploit and overwhelm the limited resources of each individual member of the CLASSES with DEFENDANT's vastly superior financial and legal resources;

- 1 e. Requiring each individual member of the Classes to pursue an individual remedy would
2 also discourage the assertion of lawful claims by the members of the CLASSES who
3 would be disinclined to pursue an action against DEFENDANT because of an
4 appreciable and justifiable fear of retaliation and permanent damage to their lives,
5 careers and well-being;
- 6 f. Proof of a common business practice or factual pattern, of which the members of the
7 CLASSES experienced, is representative of the CLASSES herein and will establish
8 the right of each of the members of the CLASSES to recover on the causes of action
9 alleged herein;
- 10 g. Absent class treatment, the prosecution of separate actions by the individual
11 members of the CLASSES, even if possible, would likely create:
- 12 1. a substantial risk of each individual plaintiff presenting in separate,
13 duplicative proceedings the same or essentially similar arguments and
14 evidence, including expert testimony;
- 15 2. a multiplicity of trials conducted at enormous expense to both the judicial
16 system and the litigants;
- 17 3. inconsistent or varying verdicts or adjudications with respect to the individual
18 members of the CLASSES against DEFENDANT; and
- 19 4. potentially incompatible standards of conduct for DEFENDANT;
- 20 5. potentially incompatible legal determinations with respect to individual
21 members of the CLASSES which would, as a practical matter be dispositive of
22 the interest of the other members of the CLASSES who are not parties to the
23 adjudications, or which would substantially impair or impede the ability of the
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members of the CLASSES to protect their interests.

- h. The claims of the individual members of the CLASSES are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;
- i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

42. Well-defined Community of Interest: PLAINTIFF also meet the established standards for class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of PLAINTIFF is typical of the claims of all members of the CLASSES she seeks to represent because all members of the CLASSES sustained injuries and damages arising out of DEFENDANT's common course of conduct in violation of law and injuries and damages of all members of the CLASSES were caused by DEFENDANT's wrongful conduct in violation of law as alleged herein.
- b. Adequacy: PLAINTIFF ERNESTO:
 - i. is an adequate representative of the CLASSES he seeks to represent;
 - ii. will fairly protect the interests of the members of the CLASSES;
 - iii. has no interests antagonistic of the members of the CLASSES; and
 - iv. will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

1 c. Predominant Common Questions of Law or Fact: There are common questions of
2 law and/or fact as to the members of the CLASSES which predominate over
3 questions affecting only individual members of the CLASSES, including, without
4 limitation:

- 5 i. Whether DEFENDANT failed and continues to fail to properly and accurately
6 pay wages to the members of the Minimum Wage Class and Overtime Class
7 in violation of the Labor Code including but not limited to Labor Code §§
8 510 and 1182.12 (see also, SB3 Ch. 4);
- 9 ii. Whether DEFENDANT failed and continues to fail to authorize and permit
10 proper meal periods to the members of the Meal Period Class in violation
11 of the Labor Code and Section 11 of the IWC Wage Orders;
- 12 iii. Whether DEFENDANT failed and continues to fail to authorize and permit
13 proper paid rest periods to the members of the Rest Period Class in violation
14 of the Labor Code and Section 12 of the IWC Wage Orders;
- 15 iv. Whether DEFENDANT failed to pay uniform maintenance to Maintenance
16 Class;
- 17 v. Whether DEFENDANT failed to pay business expenses incurred by the
18 Business Expenses Class for the benefit of DEFENDANT;
- 19 vi. Whether DEFENDANT failed to timely furnish accurate itemized
20 statements to the members of the §226 Wage Statement Class and the
21 §226.3 Wage Statement Class;
- 22 vii. Whether DEFENDANT complied with wage reporting as required by Labor
23 Code §226(a) and §226.3;
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- viii. Whether DEFENDANT failed to pay owed money and unlawfully withheld such money from the Withheld Wage Class;
- ix. Whether DEFENDANTS are liable pursuant to Labor Code §203;
- x. Whether the members of the Classes are entitled to penalties pursuant to Labor Code §§2699, et seq.;
- xi. Whether DEFENDANTS' conduct constitutes unfair business practices within the meaning of B&PC §17200, et seq.;
- xii. Whether the members of the Classes are entitled to injunctive relief;
- xiii. Whether the members of the Classes are entitled to restitution; and
- xiv. Whether DEFENDANTS are liable for attorney's fees and costs.

V. STATEMENT OF FACTS

43. DEFENDANT provides services related to pumping and porta-potty rental, temporary fence, temporary power, emergency services, dumpsters, and storage rentals. DEFENDANT has its business spread over several locations across Southern California.

45. PLAINTIFF and members of the CLASSES' positions with DEFENDANTS are non-exempt and are paid on an hourly basis. PLAINTIFF's hourly rate was \$17.90.

47. Each person worked their individual routes cover numerous locations in Southern California. Each location had between 5 to 15 bathrooms.

1 48. PLAINTIFF along with Class Members would have to forego their lunch and rest breaks
2 to complete their assigned and required work.

3 49. PLAINTIFF and those similarly situated were not paid all of their overtime wages. If they
4 worked over a certain number of overtime hours they would be required to "roll the hours over"
5 to another day. This resulted in some overtime hours becoming regular time hours in some
6 instances and in other overtime hours being unpaid altogether because DEFENDANT just
7 purportedly kept rolling the hours over. In this latter instance the employees were not paid
8 minimum wages or overtime wages.

9 50. PLAINTIFF was terminated on February 14, 2020.

11 **VI. CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **(FAILURE TO PAY MINIMUM WAGES)**

14 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

15 51. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1
16 through 50, inclusive, of this Complaint by reference, as though fully set forth herein.

17 52. PLAINTIFF and members of the CLASSES were and are at all times relevant non-exempt
18 hourly employees of DEFENDANT.

19 53. PLAINTIFF and members of the CLASSES regularly worked and/or work more than eight
20 (8) hours in a day and/or forty (40) hours in a week (collectively "Overtime Hours"). However,
21 PLAINTIFF and members of the CLASSES were forced to roll over the Overtime Hours to other
22 days. At times this result in PLAINTIFF and members of the CLASSES not getting paid at all for
23 the Overtime Hours.

24 54. DEFENDANT was at all time here relevant required to pay PLAINTIFF and members of
25 the CLASSES for all hours worked at their rates of pay and not less than minimum wages.

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1 55. As a result of the unlawful acts of DEFENDANT, PLAINTIFF and members of the
2 CLASSES have been deprived of wages in amounts to be proven at trial, and PLAINTIFF is
3 entitled to recovery of such amounts from DEFENDANTS, plus liquidated damages, interest,
4 penalties and attorney's fees and costs.

5 **SECOND CAUSE OF ACTION**

6 **(FAILURE TO PAY OVERTIME WAGES)**

7 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

8 56. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1
9 through 55, inclusive, of this Complaint by reference, as though fully set forth herein.

10 57. PLAINTIFF and members of the CLASSES were and are at all times relevant non-exempt
11 hourly employees of DEFENDANT.

12 58. Labor Code §510, provides that an employee must be paid overtime after working eight
13 (8) hours in a day and forty (40) hours in a week. Overtime must be paid at one-and-a-half times
14 the regular rate of pay after eight hours in a day and forty hours in a week. The overtime rate
15 becomes two times the regular rate of pay for hours over twelve in a day, or over eight hours on
16 the seventh consecutive day worked.

17 59. Labor Code § 1194 also establishes an employees' right to recover unpaid wages, including
18 overtime compensation and interest thereon, together with the cost of suit. Moreover, the Fair
19 Labor Standards Act provides liquidated damages in the amount of all overtime not paid in addition
20 to the overtime pay.

21 60. PLAINTIFF and members of the CLASSES regularly worked Overtime Hours. However,
22 PLAINTIFF and members of the CLASSES were forced to roll over the Overtime Hours to other
23 days. This typically resulted in PLAINTIFF and members of the CLASSES overtime pay being
24 converted to regular time pay or to pay at all.
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1 61. As a result of the unlawful acts of DEFENDANT, PLAINTIFF and members of the
2 CLASSES have been deprived of wages and overtime and double time premium pay in amounts
3 to be proven at trial, and PLAINTIFF and members of the CLASSES are entitled to recovery of
4 such amounts from DEFENDANT, plus interest, penalties and attorney's fees and costs. Also,
5 under the Fair Labor Standards Act they are entitled to liquidated damages.

6 **THIRD CAUSE OF ACTION**

7 **(FAILURE TO PROVIDE MEAL BREAKS)**

8 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

9 62. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1
10 through 61, inclusive, of this Complaint by reference, as though fully set forth herein.

11 63. Labor Code §512(a) provides that employees who work more than five hours in a day are
12 entitled to a meal period of at least 30 minutes; and a second meal period of at least 30 minutes if
13 they work for more than 10 hours in a day.

14 64. Labor Code §512 further provides that "An employer may not employ an employee for a
15 work period of more than 10 hours per day without providing the employee with a second meal
16 period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours,
17 the second meal period may be waived by mutual consent of the employer and the employee only
18 if the first meal period was not waived."

19 65. Labor Code §516 provides that the Industrial Welfare Commission may adopt or amend
20 working condition orders with respect to meal periods for any workers in California consistent
21 with the health and welfare of those workers.

22 66. Section 11(A) of the IWC Wage Order(s) provides that "Unless the employee is relieved
23 of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal
24 period and counted as time worked. An "on duty" meal period shall be permitted only when the
25 nature of the work prevents an employee from being relieved of all duty and when by written

1 agreement between the parties an on-the-job paid meal period is agreed to. The written agreement
2 shall state that the employee may, in writing, revoke the agreement at any time."

3 67. Section 11(B) of the IWC Wage Order(s) provides that "If an employer fails to provide an
4 employee a meal period in accordance with the applicable provisions of this order, the employer
5 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
6 workday that the meal period is not provided."

7 68. Furthermore, an employer may not undermine a formal policy of providing meal breaks by
8 pressuring employees to perform their duties in ways that omit breaks. The wage orders and
9 governing statute do not countenance an employer's exerting coercion against the taking of,
10 creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

11 69. During their employment with DEFENDANT, PLAINTIFF and members of the
12 CLASSES consistently worked over five (5) hours per shift and therefore were entitled to a meal
13 period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

14 70. DEFENDANT regularly scheduled an employee alone route and required that the
15 employee complete a specific number of locations. For example, PLAINTIFF had to service about
16 120 portable toilets a day at various locations.

17 71. Employees worked their individual routes and would be constrained to complete all the
18 assignments for the day, as a result they would have to often forego their lunch or have a non-
19 complaint meal breaks while working or traveling from one site to another.

20 72. PLAINTIFF and members of the CLASSES had been harmed and DEFENDANT is liable
21 to PLAINTIFF and members of the CLASSES for one hour of additional premium pay at the
22 regular rate of compensation for each day in which the proper meal was not provided. The exact
23 amount of missed meal breaks wages owed to PLAINTIFF and members of the CLASSES shall
24 be proved at trial. In addition, PLAINTIFF and members of the CLASSES are entitled to interest,
25 penalties, attorney's fees ("PAGA") and costs, among other damages against DEFENDANT.

(FAILURE TO PROVIDE REST BREAKS)

73. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1 through 72, inclusive, of this Complaint by reference, as though fully set forth herein.

75. At all times relevant herein PLAINTIFF and members of the CLASSES were employed by DEFENDANTS in non-exempt positions.

77. DEFENDANT regularly scheduled an employee alone route and required that the employee complete a specific number of locations. For example, PLAINTIFF had to service about 120 portable toilets a day at various locations.

79. At all relevant times, DEFENDANT was aware of and was under a duty to comply with California Labor Code and the applicable Wage Orders.

CLASS ACTION COMPLAINT - 20

1 81. An employer who fails to provide rest periods as required by an applicable Wage Order
2 must pay the employee one additional hour of pay at the employee's regular rate of pay for each
3 workday that a rest period was not provided.

4 82. PLAINTIFF and members of the CLASSES have been harmed and DEFENDANT is liable
5 to PLAINTIFF and members of the CLASSES for one (1) hour of additional premium pay at the
6 regular rate of compensation for each day in which the proper rest period was not provided. The
7 exact amount of missed rest break wages owed to PLAINTIFF and members of the CLASSES
8 shall be proved at trial.

9 83. In addition, PLAINTIFF and members of the CLASSES are entitled to interest, penalties,
10 attorney's fees ("PAGA") and costs against DEFENDANTS.

11 **FIFTH CAUSE OF ACTION**

12 **(FAILURE TO PAY UNIFORM MAINTENANCE)**

13 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

14 84. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1
15 through 83, inclusive, of this Complaint by reference, as though fully set forth herein.

16 85. Under California law, if an employer requires non-exempt employees to wear a uniform,
17 the employer must pay for and maintain the uniform for the employee. (Labor Code §2802)

18 86. In addition to the cost of the uniform, the employer must provide non-exempt employees
19 with reasonable maintenance of the uniforms. The employer can either maintain the uniform itself,
20 or pay the employee a weekly maintenance allowance of an hour's pay at minimum wage, provided
21 that an hour's pay is a reasonable estimate of the time necessary to maintain uniform properly.

22 87. Here, DEFENDANT provided PLAINTIFF and members of the CLASSES with a uniform.
23 However, DEFENDANT does not maintain the uniforms. PLAINTIFF and members of the
24 CLASSES pay for the maintenance and cleaning themselves.

1 88. DEFENDANT failed to maintain the uniform, nor pay PLAINTIFF and members of the
2 CLASSES a weekly maintenance allowance of an hour's pay at minimum wage.

3 89. This is especially egregious here where PLAINTIFF and members of the CLASSES'
4 uniforms would regularly get soiled with urine, feces and other human excrement.

5 90. As a proximate result of the aforementioned violations of §2802, PLAINTIFF and
6 members of the CLASSES are entitled to recovery from DEFENDANT for reimbursement of
7 necessary expenditures including interests, or an hour pay extra per week.

8 91. As a proximate result of the aforementioned violations of Labor Code §2802, PLAINTIFF
9 and members of the CLASSES have been damaged in an amount according to proof at the time of
10 Trial.

11 92. Pursuant to Labor Code §2802(b), PLAINTIFFS and members of the CLASSES request
12 that the Court award interest at the same rate as judgments in civil actions, accruing from the date
13 on which each PLAINTIFFS and members of the CLASSES incurred the necessary expenditure
14 or loss.

15 93. Pursuant to Labor Code §2802(c), PLAINTIFFS and members of the CLASSES request
16 that the Court award reasonable attorney's fees and costs incurred by them in this action.

17 **SIXTH CAUSE OF ACTION**

18 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

19 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

20 94. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1
21 through 93, inclusive, of this Complaint by reference, as though fully set forth herein.

22 95. California Labor Code §§ 2800 and 2802 provide that an employer must reimburse
23 employees for all necessary expenditures.

24 96. California Labor Code §2802(a) provides that "an employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence

05/03/2021

1 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

2 This includes, “all reasonable costs.” (Labor Code §2802(c).)

3 97. California Labor Code §2804 states in pertinent part that “any contract or agreement,
4 express or implied, made by any employee to waive the benefits of this article or any part thereof
5 is null and void, and this article shall not deprive any employee or his personal; representative of
6 any right or remedy to which he is entitled under the laws of this State.”

7 98. During PLAINTIFF and members of the CLASSES’ employment with DEFENDANT,
8 PLAINTIFF and members of the CLASSES incurred necessary business-related expenses and
9 costs that were not fully reimbursed by DEFENDANT including, but not limited to, the expenses
10 of purchasing hard hats, special boots, and gloves.

11 99. Furthermore, PLAINTIFF and members of the CLASSES were and are required to buy
12 from their own pocket the required supplies of their trade.

13 100. DEFENDANT did not reimburse its employees for their purchases made for the
14 benefit of DEFENDANT.

15 101. As a proximate result of the aforementioned violations, PLAINTIFF and members
16 of the CLASSES have been damaged in an amount according to proof at the time of trial.

17 102. Pursuant to California Labor Code §2802(b), PLAINTIFF and members of the
18 CLASSES request that the Court award interest at the same rate as judgments in civil actions,
19 accruing from the date on which PLAINTIFF incurred the necessary expenditure or loss or must
20 at least be paid twice the minimum wage.

21 103. Pursuant to California Labor Code §2802(c), PLAINTIFF and members of the
22 CLASSES request that the Court award reasonable attorney’s fees and costs incurred by them in
23 this action.

24 **SEVENTH CAUSE OF ACTION**

25 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

1 [LABOR CODE §226)]

2 PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS

3 104. PLAINTIFF and members of the CLASSES hereby refer to and incorporate
4 paragraphs 1 through 103, inclusive, of this Complaint by reference, as though fully set forth
5 herein.

6 105. Labor Code §226(a) require employers to provide accurate itemized wage
7 statements for each wage payment. Labor Code §226 (e) provides for a recovery of the greater of
8 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
9 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
10 aggregate penalty of four thousand dollars (\$4,000) (per employee).

11 106. At all relevant times, PLAINTIFF and members of the CLASSES were employed
12 by DEFENDANT in non-exempt positions.

13 107. At relevant times material hereto, DEFENDANT was aware of, and was under a
14 duty to comply with this law and other relevant laws.

15 108. At relevant times material hereto, DEFENDANT failed to provide timely, accurate
16 itemized wage statements to PLAINTIFF and members of the CLASSES in accordance with
17 California Labor Code. The statements provided by DEFENDANT did not accurately reflect actual
18 gross wage earned, net wages earned, and/or the appropriate deductions to account for all proper
19 regular and overtime pay, and breaks missed. In failing to do so, DEFENDANT also did not
20 comply with the provision set forth above.

21 109. As a result of DEFENDANT's abovementioned unlawful act, PLAINTIFF and
22 members of the CLASSES suffered injury and damage.

23 110. PLAINTIFF and members of the CLASSES is therefore entitled to recover from
24 DEFENDANT a §226(e) penalty not exceeding four thousand dollars per employee.
25

05/03/2021

1 111. PLAINTIFF and members of the CLASSES are entitled to injunctive relief to
2 ensure compliance with the abovementioned Labor Code provision and seek to recover actual
3 damages and/or penalties as applicable by law to be proved at trial, plus interest, and attorney's
4 fees and costs, among other damages against DEFENDANT.

5 **EIGHTH CAUSE OF ACTION**

6 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

7 **[LABOR CODE §226.3])**

8 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

9 112. PLAINTIFF and members of the CLASSES hereby refer to and incorporate
10 paragraphs 1 through 111, inclusive, of this Complaint by reference, as though fully set forth
11 herein.

12 113. The failure to provide itemized wage statements is in violation of Labor Code
13 §226.3 which provides in relevant part that any employer who violates subdivision (a) of §226
14 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
15 per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
16 violation in a subsequent citation for which the employer fails to provide the employee a wage
17 deduction statement or fails to keep the record required in subdivision (a) of Section 226.

18 114. At all relevant times, PLAINTIFF and members of the CLASSES were employed
19 by DEFENDANT in non-exempt positions.

20 115. At relevant times material hereto, DEFENDANT was aware of, and was under a
21 duty to comply with this law and other relevant laws.

22 116. At relevant times material hereto, DEFENDANTS failed to provide timely,
23 accurate itemized wage statements to PLAINTIFF and members of the CLASSES in accordance
24 with California Labor Code. The statements provided by DEFENDANTS did not accurately reflect
25 actual gross wage earned, net wages earned, and/or the appropriate deductions to account for all

proper regular and overtime pay, and breaks missed. In failing to do so, DEFENDANTS also did not comply with the provision set forth above.

117. As a result of DEFENDANT's abovementioned unlawful act, PLAINTIFF and members of the CLASSES suffered injury and damage.

118. PLAINTIFF and members of the CLASSES are therefore entitled to the above-described civil penalty.

119. PLAINTIFF and members of the CLASSES are entitled to injunctive relief to ensure compliance with the abovementioned Labor Code provision and seek to recover actual damages and/or penalties as applicable by law to be proved at trial, plus interest, and attorney's fees and costs, among other damages against DEFENDANT.

NINTH CAUSE OF ACTION

(UNLAWFUL WITHHOLDING OF WAGES)

PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS

120. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1 through 119, inclusive, of this Complaint by reference, as though fully set forth herein.

121. Labor Code §216 provides that it is a misdemeanor for an employer to "willfully refuse to pay wages due and payable after demand has been made" or "falsely den[y] the amount or validity thereof."

122. Labor Code §225.5 provides a penalty of \$100 for an initial violation and \$200 for any subsequent violation of §216 plus 25% of the withheld amount.

123. Upon demand to DEFENDANT, PLAINTIFFS and members of the CLASSES were entitled by law to receive all of their wages and their final paycheck(s) immediately. DEFENDANT also unlawfully withheld the balance of overtime pay, and rest break wages.

Moreover, these wages were demanded thereafter. Moreover, DEFENDANT withheld earned overtime and earned wages with it rolling over scheme.

124. As a result of DEFENDANT's abovementioned unlawful act, PLAINTIFF and members of the CLASSES suffered injury and damage.

125. As such, DEFENDANT is subject to the Labor Code §225.5. PLAINTIFF and members of the CLASSES are entitled to such penalties plus interest as required by law, plus restitution of all wages earned but not paid, the exact amount of penalties will be proved at trial.

TENTH CAUSE OF ACTION

(WAITING TIME PENALTIES)

PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS

126. PLAINTIFF and members of the CLASSES hereby refer to and incorporate paragraphs 1 through 125, inclusive, of this Complaint by reference, as though fully set forth herein.

127. This cause of action is wholly derivative of and dependent upon the unpaid wage claims set forth for, unpaid overtime and rest period premium wages that remained unpaid upon termination or resignation of members of the CLASSES' employment.

128. Labor Code §201 provides that the "wages earned and unpaid at the time of discharge are due and payable immediately." Similarly, Labor Code §202 states, "if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

129. Labor Code §203 provides that "if an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a

1 penalty from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.”

3 130. During the relevant time period, DEFENDANT willfully failed to pay PLAINTIFF
4 and members of the CLASSES who are no longer employed by DEFENDANT all earned and
5 unpaid wages set forth above, including but not limited to, properly calculated overtime pay, meal
6 and rest period premium wages, either at the time of discharge (i.e., within 24 hours), or within
7 seventy-two (72) hours of their leaving DEFENDANT’s employ.

8 131. DEFENDANT’s failure to pay members of the CLASSES who are no longer
9 employed by DEFENDANT their wages earned and unpaid at the time of discharge, or within
10 seventy-two (72) hours of their leaving DEFENDANT’s employ, is in violation of California
11 Labor Code sections 201, 202, and 203.

12 132. Members of the CLASSES are entitled to recover from DEFENDANTS the
13 statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to
14 a thirty (30) day maximum pursuant to California Labor Code sections 203, plus interest and
15 attorney’s fees in the amount to be proven at trial.

16 **ELEVENTH CAUSE OF ACTION**

17 **(PRIVATE ATTORNEY GENERAL ACT CLAIM - LABOR CODE §2699, ET SEQ.)**

18 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

19 133. PLAINTIFF and members of the CLASSES hereby refer to and incorporate
20 paragraphs 1 through 132, inclusive, of this Complaint by reference, as though fully set forth
21 herein.

22 134. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor
23 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
24 Development Agency, may, as an alternative, be recovered through a civil action brought by an
25

1 aggrieved employee on behalf of himself or herself and other current or former employees)
2 PLAINTIFF seeks recovery or applicable civil penalties.

3 135. Pursuant to Labor Code §2699(e) (which provides that for all provisions of the
4 Labor Code except those for which a civil penalty is specifically provided, there is established a
5 civil penalty for a violation of these provisions), PLAINTIFF seeks recovery of the applicable civil
6 penalties pursuant to Labor Code §§2699(e)(2) as follows:

- 7 a. One hundred dollars (\$100.00) per pay period for the initial violation; and
- 8 b. Two hundred dollars (\$200.00) per pay period for each subsequent violation.

9 136. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved
10 employee pursuant to subdivision (a) or (f) of §2699 alleging a violation of any provision listed in
11 §2699.5 shall commence only after the following requirements have been met: (1) The aggrieved
12 employee or representative shall give written notice by certified mail to the Labor and Workforce
13 Development Agency and the employer of the specific provisions of this code alleged to have been
14 violated, including the facts and theories to support the alleged violation.

15 137. Here, PLAINTIFF and members of the CLASSES' civil action alleges violation of
16 provisions listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) applies to this action,
17 and Labor Code §26699.3(b) and §26699.3(c) do not apply to this action.

18 138. On February 08, 2021, PLAINTIFF complied with Labor Code §2699.3(a) in that
19 PLAINTIFF, on behalf of persons similarly situated, gave written notice by certified mail to the
20 Labor and Workforce Development Agency (LWDA") and DEFENDANT of the specific
21 provisions of the labor Code alleged to have been violated, including the facts and theories to
22 support the alleged violation.

23 139. Labor Code §2699.3(a) further states in pertinent part "(2)(A) The agency shall
24 notify the employer and the aggrieved employee or representative by certified mail that it does not
25 intend to investigate the alleged violation within 60 calendar days of the postmark date of the

1 notice received pursuant to paragraph (1). Upon receipt of the notice or if no notice is provided
2 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
3 aggrieved employee may commence a civil action pursuant to Section 2699."

4 140. As of February 08, 2021 (more than 65 calendar days after PLAINTIFF's LWDA
5 letters were mailed via certified mail), PLAINTIFF had not received any notification that the
6 LWDA intended to investigate the alleged violations.

7 141. As such, PLAINTIFF has complied with Labor Code §2699.3(a) and has been
8 given authorization therefrom to commence a civil action which includes a cause of action pursuant
9 to Labor Code §2699.

10 **TWELTH CAUSE OF ACTION**
11 **(UNFAIR BUSINESS PRACTICES)**

12 **PLAINTIFF AND MEMBERS OF THE CLASSES against ALL DEFENDANTS**

13 142. PLAINTIFF and members of the CLASSES hereby refer to and incorporate
14 paragraphs 1 through 141, inclusive, of this Complaint by reference, as though fully set forth
15 herein.

16 143. Within all times relevant herein, DEFENDANT, in an effort to exploit its workers
17 for profit or otherwise, have engaged in the following unlawful, unfair, deceptive, and misleading
18 business practices:

- 19 a. Failing to properly and timely pay minimum wages of PLAINTIFF and members
20 of the CLASSES;
- 21 b. Failing to properly and timely pay calculated overtime of PLAINTIFF and
22 members of the CLASSES;
- 23 c. Employing an intentional scheme to avoid paying proper wages;
- 24 d. Failing to provide proper meal breaks and rest periods, or to pay premium wages
25 for missed meal and rest periods to PLAINTIFF and members of the CLASSES;

- 1 e. Failing to pay owed money, and fully reimburse business expenses and for uniform
2 maintenance;
3 f. Failing to provide accurate wage statements to PLAINTIFF and members of the
4 CLASSES; and
5 g. Failing to pay all wages earned and owed to departing employees.

6 144. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation
7 to the employee(s) at DEFENDANT.

8 145. As a direct and proximate cause of DEFENDANT's unlawful, unfair, and/or
9 fraudulent acts and practices described herein, DEFENDANT has received and continues to hold
10 ill-gotten gains belonging to PLAINTIFF and members of the CLASSES. As a direct and
11 proximate cause of DEFENDANT's unlawful business practices, to PLAINTIFF and members of
12 the CLASSES have suffered economic injuries including, but not limited to cut-of-pocket business
13 expenses, unlawful deductions from compensation, loss of minimum wage and overtime wages,
14 compensation for missed meal and rest period, and waiting time penalties. DEFENDANT has
15 profited from its unlawful, unfair and in the amount of those business expenses, improper
16 deductions from compensation, unpaid minimum wages and overtime, unpaid compensation for
17 missed meal and rest periods, and interests accrued by to PLAINTIFF and members of the
18 CLASSES.

19 146. Pursuant to the provisions of B&PC §17203, PLAINTIFF and members of the
20 CLASSES are entitled to restoration of lost wages, unpaid business expenses, unlawful deductions,
21 meal and rest periods and interests, DEFENDANT have collected by the use of the unfair,
22 deceptive, and misleading business practices described in this Complaint.

23 147. PLAINTIFF and members of the CLASSES are entitled to enforce all applicable
24 penalty provisions of the California Labor Code pursuant to B&PC §17202.
25

1 148. PLAINTIFF's success in this action will enforce important rights affecting the
2 public interest. In this regard, PLAINTIFF sues on behalf of the public as well as on behalf of
3 themselves and others similarly situated. PLAINTIFF seeks and is entitled to reimbursement of
4 business expenses, the unpaid compensation, declaratory and injunctive relief, civil penalties, and
5 any other appropriate remedy.

6 149. Pursuant to the provisions of B&PC § 17203, this Court should issue an injunction
7 prohibiting DEFENDANT from engaging in the foregoing unfair, deceptive, and misleading
8 business practices.

9 150. In order to prevent DEFENDANT from profiting and benefitting from their
10 wrongful and illegal acts and continuing those acts, an order requiring DEFENDANT to disgorge
11 all the profits and gains they have reaped and restore such profits and gains to PLAINTIFF and
12 members of the CLASSES, from whom they were unlawfully taken.

13 151. PLAINTIFF has assumed the responsibility of enforcement of the laws and lawful
14 claims specified herein. There is a financial burden incurred in pursuing this action which is in the
15 public interest. Therefore, reasonable attorney's fees are appropriate pursuant to CCP §1021.5.

16 152. As a direct and proximate cause of the unfair business practices described above,
17 PLAINTIFF, members of the CLASSES, and members of the general public have all suffered
18 significant losses and DEFENDANT have been unjustly enriched.

19 153. PLAINTIFF, members of the CLASSES, and members of the general public are
20 entitled to: restitution of money acquired by DEFENDANT by means of their unfair business
21 practices, in an amounts not yet ascertained but to be ascertained at trial; (b) injunctive relief
22 against DEFENDANT's continuation of their unfair business practices; and (c) declaration that
23 DEFENDANT's business practices are unfair within the meaning to the statute.

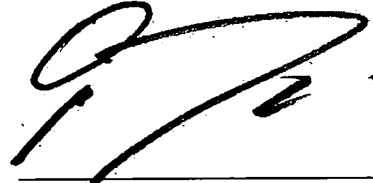
24 **VII. PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiff ERNESTO MARTINEZ, and members of the CLASSES pray for
2 judgment against Defendant DIAMOND ENVIRONMENTAL SERVICES, LP and Does 1
3 through 50, inclusive, as follows:

- 4 1. That the Court issue an Order certifying the Classes herein, appointing all named
5 PLAINTIFF as representative of all others similarly situated, and appointing all law
6 firms representing PLAINTIFF as counsel for the members of the Classes;
- 7 2. An award of general, compensatory and liquidated damages in an amount to be
8 determined at trial;
- 9 3. Wages constituting regular time pay, overtime time pay, meal and rest breaks wages,
10 owed money earned, unpaid business expenses and uniform maintenance including
11 interest and penalties, to the extent provided by law, including all applicable Labor
12 Code penalties;
- 13 4. Waiting time penalties;
- 14 5. All applicable labor code penalties including PAGA penalties and additional wages,
15 including but not limited to those provided for under California Labor Code §§225.5,
16 226, 226.3, 2644 et seq.
- 17 6. Injunctive relief prohibiting DEFENDANT from engaging in the unfair, deceptive, and
18 misleading business practices described herein (Unfair Competition);
- 19 7. Restoration of all money gained by DEFENDANT and all money lost by PLAINTIFF
20 by DEFENDANT wrongly using the unfair, deceptive, and misleading business
21 practices described in this Complaint (Unfair Competition);
- 22 8. Reasonable attorneys' fees;
- 23 9. Prejudgment interest;
- 24 10. All costs of suit herein incurred; and
- 25 11. Such other and further relief as the court may deem proper.

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3 Dated this 28th day of April 2021

BITTON & ASSOCIATES

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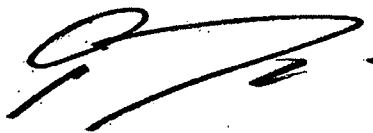
OPHIR J. BITTON,
Attorneys for Plaintiff ERNESTO MARTINEZ
and all others similarly situated

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3 **DEMAND FOR TRIAL BY JURY**

4 Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

5 Dated this 28th day of April 2021

6 BITTON & ASSOCIATES

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8 OPHIR J. BITTON

9 Attorneys for Plaintiff ERNESTO MARTINEZ
10 and all others similarly situated
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