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11 aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

14 RAFAEL RIVAS, JR., on behalf of other
15 similarly aggrieved employees,

16 Plaintiffs,

17 v.

18 PIPE RESTORATION, INC. DBA ACE
19 DURAFLO PIPE RESTORATION, an active
20 California Corporation; and DOES 1 through
21 10,

22 Defendants.

**Case No.: 30-2021-01189254-CU-OE-
CXC**

Assigned to: Hon. William D. Cluster
Department: CX-104

**FIRST AMENDED COMPLAINT –
REPRESENTATIVE ACTION**

1. Penalties Pursuant to Private
Attorneys General Act (“PAGA”);

23 Plaintiff RAFAEL RIVAS, JR. (“Plaintiff”), on behalf all similarly aggrieved
24 employees, based on information and belief, complain and allege:

25 **I.**

26 **INTRODUCTION**

27 1. This representative action lawsuit arises out of the failure of Defendant PIPE
28 RESTORATION, INC. DBA ACE DURAFLO PIPE RESTORATION (referred
here as “PIPE RESTORATION” or “Defendant”) to provide meal periods at the

proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to pay for employee reporting time, to provide accurate wage statements, to reimburse employee business expenses, to pay all wages owed to terminated or separated employees in a timely manner, and to pay all vacation pay owed to terminated or separated employees.

2. Defendant employed Plaintiff and other similarly aggrieved employees during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, et seq., Labor Code §500, et seq., Labor Code §1194, et seq., Labor Code §2800, et seq., and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendant is engaged in the business of residential and commercial plumbing repair and restoration services. Plaintiff RAFAEL RIVAS, JR. was hired by Defendant in 2016 and was terminated by Defendant on or about March 30, 2020. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff was employed by Defendant from its headquarters and warehouse located in Santa Ana, California.
4. At the time of their separation, Plaintiff and other similarly aggrieved employees were not paid all of their wages, including all accrued and vested vacation pay.
5. Plaintiff and other similarly aggrieved employees were also deprived of lawful meal and rest periods, not paid all wages including overtime they were entitled to, and failed to receive accurate itemized wage statements.
6. Defendant had a consistent policy of not paying wages for all hours worked, including overtime and double time wages as applicable.
7. Defendant had a consistent policy of failing to pay employees reporting time pay after employees reported to work but were turned away by Defendant.
8. Defendant had a consistent policy of requiring its employees, including Plaintiff, to work through meal periods or work without a meal period for at

1 least five (5) hours of a shift and failing to pay such employees one (1) hour of
2 pay at the employees' regular rate of compensation for each workday that the
3 meal period was not provided or as required by California state wage and hour
4 laws.

5 9. Defendant had a consistent policy of failing to allow its employees, including
6 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
7 fraction, worked, and failing to pay such employees one (1) hour of pay at their
8 regular rate of compensation for each workday that the rest period is not
9 provided, or other compensation, as required by California state and wage and
10 hour laws.

11 10. Defendant knowingly provided inaccurate wage statements to its
12 employees, including Plaintiff, that did not correctly include the correct wages,
13 including compensation for meal periods not provided and rest period not
14 authorized or permitted as required by California state wage and hour laws.

15 11. Defendant had a consistent policy of collecting or receiving from employees
16 wages previously paid by Defendant to employees.

17 12. Defendant had a consistent policy of failing to pay its employees, including
18 Plaintiff, all wages including accrued and vested vacation pay, due at the
19 termination or separation, in violation of California state wage and hour laws.
20 Defendant had a consistent policy of failing to reimburse its employees,
21 including Plaintiff, for all business expenses incurred in the discharge of their
22 duties including mileage.

23 13. Plaintiff RAFAEL RIVAS, JR., on behalf of the State of California, himself, and
24 other similarly aggrieved employees, also brings this action pursuant to
25 California Private Attorney General Act ("PAGA"), Cal. Lab. Code §2698, et
26 seq. seeking unpaid wages and other compensation, penalties, and reasonable
27 attorneys' fees and costs for violations of California Labor Code sections §§ 201,
28 202, 203, 204, 221, 226, 226.7, 227.3, 246, 247.5, 248.5, 510, 512, 558, 1174, 1174.5,

1194, 1194.2, 1197, 1197.1, 2802, 2699 and violations of the applicable Wage Order 16, including paragraphs 3, 4, 5, 7, 11, 12, and 20 of the applicable IWC Wage Order.

II.

JURISDICTION AND VENUE

14. Venue as to as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The County of Orange is the proper venue, because work for Defendant was performed by Plaintiff and other similarly aggrieved employees in the County of Orange and the legal obligations owed by Defendant to Plaintiff and other similarly aggrieved employees were breached in the County of Orange.
15. The California Superior Court has jurisdiction in this matter, because Plaintiff is a resident of California, Defendant is qualified to do business in California and regularly conducts business in California.

III.

THE PARTIES

16. Plaintiff RAFAEL RIVAS, JR. is a resident of the State of California, and was employed by Defendant in Orange County from 2016 through on or about March 30, 2020.
17. Defendant PIPE RESTORATION, INC. DBA ACE DURAFLO PIPE RESTORATION was an active California Corporation at all times during the claims of Plaintiff and other similarly aggrieved employees and was doing business in California.
18. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the defendants sued herein as Does 1 through 10, but he 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 under Code of Civil

1 Procedure § 474. Plaintiff will amend this First Amended Complaint to allege
2 their true names and capacities when ascertained.

3 19. Plaintiff is informed and believes and thereon alleges that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendants,
5 carried out a joint scheme, business plan or policy in all respects pertinent
6 hereto, and the acts of each Defendant are legally attributable to the other
7 Defendants.

8 IV.

9 GENERAL ALLEGATIONS

10 20. At all times relevant here and as set forth in the following paragraphs of this
11 First Amended Complaint, Defendant employed more than 100 people; and
12 Plaintiff and each similarly aggrieved employee was employed by Defendant,
13 and each of them, in the State of California.

14 21. The employees of Defendant have not been provided: uninterrupted thirty-
15 minute meal periods for work periods of more than five (5) hours per day;
16 second uninterrupted thirty-minute meal periods for work periods of more
17 than ten (10) hours per day; and have not been permitted to take ten-minute
18 (10) rest periods for work periods of four (4) hours or major fractions, pursuant
19 to the Labor Code, and applicable IWC Wage Orders.

20 22. Defendant failed to pay employees wages owed for all hours worked, including
21 overtime hours as applicable. Defendant also collected or received from
22 employees wages previously paid by Defendant to employees.

23 23. Defendant failed to pay for employee reporting time to employees reporting to
24 work and being turned away by Defendants.

25 24. Defendant failed to pay Plaintiff and other similarly aggrieved employees upon
26 separation the wages earned and unpaid at the time of discharge, including
27 accrued and vested vacation pay or "PTO".
28

1 25. Defendant failed to provide Plaintiff and other similarly aggrieved employees,
2 at the time of each payment of wages, an accurate itemized statement in
3 writing, showing the gross wages earned and/or paid, including premium
4 wages owed for failing to provide meal and/or rest periods at the proper
5 intervals.

6 26. Defendant failed to fully reimburse Plaintiff and other similarly aggrieved
7 employees for all their business-related expenditures. In violation of the Labor
8 Code, Plaintiff and other employees did not receive indemnification for all
9 business-related expenditures, including mileage expenses.

10 27. Plaintiff asserts a single claim for relief on behalf of the State of California,
11 himself and other similarly aggrieved employees as a representative action
12 pursuant to PAGA. Defendant has made no effort as of the filing of this
13 Complaint to correct or remedy the violations of law specified here.

14 **V.**

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT**
17 **(LABOR CODE § 2699 *et seq.*)**

18 28. Plaintiff incorporates paragraphs 1 through 27 of this First Amended Complaint
19 as if fully alleged herein.

20 29. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
21 private parties may recover civil penalties for violations of the California Labor
22 Code. PAGA penalties are in addition to any other relief available under the
23 Labor Code.

24 30. As set forth above and below, Defendants violated the California Labor Code
25 by consistently failing to employ Plaintiff and other similarly aggrieved
26 employees in compliance with California law.

27 31. Plaintiff Rafael Rivas, Jr. provided written notice by certified mail to
28 Defendants on March 15, 2021, which was supplemented on March 18, 2021 and
on January 7, 2022, and electronic notice thereafter to the State Labor &

1 Workforce Development Agency ("LWDA"), of the legal claims and theories of
2 this case. Upon initial submission to the LWDA, Plaintiff's PAGA claim was
3 assigned LWDA Case No. LWDA-CM-826101-21. To date, and after 65 days
4 from the date of mailing of each notice, the LWDA has not notified Plaintiff that
5 the LWDA intends to exercise jurisdiction over the claim for civil penalties
6 under the PAGA. Accordingly, Plaintiff has exhausted administrative remedies
7 as required by Labor Code § 2699.3. Attached hereto are copies of the
8 aforementioned notices.

9 32. Under PAGA, Plaintiff and all other aggrieved employees are entitled to
10 recover the maximum civil penalties permitted by law from Defendant for the
11 violations of Labor Code alleged in this First Amended Complaint and as set
12 forth in the attached notices.

13 33. Plaintiff and all other similarly aggrieved employees are also entitled to recover
14 their attorneys' fees and costs under Labor Code § 2699.

15
16 **FAILURE TO PROVIDE MEAL PERIOD OR**
17 **COMPENSATION IN LIEU THEREOF**
18 **(Labor Code §§ 226.7, 512, 558)**

19 34. By its failure to provide thirty minute (30) uninterrupted meal period as well as
20 second meal period, if applicable, to Plaintiff and all other similarly aggrieved
21 employees, Defendant willfully violated the provisions of Labor Code §§ 226.7,
22 512, 558, and the applicable IWC Wage Orders.

23 35. As a result of Defendant's unlawful conduct, Plaintiff and all other similarly
24 aggrieved employees have suffered damages.

25
26 **FAILURE TO PROVIDE REST PERIODS OR**
27 **COMPENSATION IN LIEU THEREOF**
28 **(Labor Code § 226.7)**

1 36. By its failure to provide ten-minute (10) rest periods for every four (4) hours of
2 work or major fraction thereof per day to Plaintiff and all other similarly
3 aggrieved employees, Defendant willfully violated Labor Code § 226.7 and the
4 applicable Wage Orders.

5 37. As a result of Defendant's unlawful conduct, Plaintiff and all other similarly
6 aggrieved employees have suffered damages.

7
8 **FAILURE TO PAY WAGES**
9 **(Labor Code §§ 204, 221, 510, 1194, 1194.2)**

10 38. At all relevant times, Plaintiff and all other similarly aggrieved employees were
11 employees of Defendant covered by Labor Code §§ 204, 221, 510, 1194, 1194.2
12 and the applicable Wage Orders, such that they were entitled to receive
13 minimum and overtime wages for all hours worked.

14 39. Defendant has violated California law and the specified provisions of the Labor
15 Code and the applicable Wage Orders by its failure to pay all wages due in
16 accordance, including minimum wages, wrongfully classified off-the-clock
17 wages and overtime pay. Defendant also collected or received from employees
18 wages it had previously paid Defendant to employees. As a result of
19 Defendant's unlawful conduct, Plaintiff and all other similarly aggrieved
20 employees have suffered damages as articulated in the Prayer for Relief, set
21 forth below, and fully incorporated here as applicable.

22
23 **FAILURE TO PAY FOR REPORTING TIME**
24 **(8 Cal Code Regulations §§ 11010-11160)**

25 40. At all relevant times, Plaintiff and all other similarly aggrieved employees were
26 required to report to work and did report to work only to be told that business
27 was light and/or they weren't needed or no longer needed, and they were sent
28 home but they did not receive their regular rate of pay for at least half of their
usual or scheduled day's work but in no event less than two hours.

1 41. As such, Defendant has violated California's Wage Order pertaining to "Pay for
2 Reporting to Work" and 8 Cal Code Regulations §§ 11010-11160 and all other
3 applicable laws and statutes.

4 42. As a result of Defendant's unlawful conduct, Plaintiff and all other similarly
5 aggrieved employees have suffered damages.

6
7 **FAILURE TO PAY WAGES DUE AT TERMINATION**
8 **(Labor Code §§ 201, 202, 203)**

9 43. By its failure to timely pay Plaintiff and all other similarly aggrieved
10 employees, Defendant willfully violated the provisions of Labor Code §§ 201,
11 202, 203 and applicable Wage Orders. Sec. 203 of Labor Code provides that if an
12 employer willfully fails to timely pay such wages, the employer must, as
13 penalty, continue to pay the employee's wages until the back wages are paid in
14 full or an action is commenced.

15 44. As a result of Defendant's unlawful conduct, Plaintiff and all other similarly
16 aggrieved employees have suffered damages.

17
18 **FAILURE TO PAY VACATION WAGES DUE AT TERMINATION**
19 **(Labor Code §227.3)**

20 45. By its failure to timely pay Plaintiff and all other similarly aggrieved
21 employees, Defendant willfully violated the provisions of Labor Code §227.3.
22 Section 227.3 of Labor Code provides that whenever a contract of employment
23 or employer policy provides for paid vacation, and an employee is terminated
24 without having taken off his or his vested vacation time, all vested vacation
25 shall be paid to him as wages at his or his final rate in accordance with such
26 contract of employment or employer policy respecting eligibility of time served;
27 provided, however, that an employment contract or employer policy shall not
28 provide for forfeiture of vested vacation time upon termination.

1 46. As a result of Defendant's unlawful conduct, Plaintiff and all other similarly
2 aggrieved employees have suffered damages.

3
4
5 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**
6 **(Labor Code §226)**

7 47. By its failure to provide accurate itemized wage statements, semimonthly or at
8 the time of each payment of wages, Defendant willfully violated the provisions
9 of Labor Code §226 and applicable Wage Orders.

10 48. As a result of Defendant's unlawful conduct, Plaintiff and all other similarly
11 aggrieved employees have suffered damages.

12
13 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**
14 **(Labor Code §§2800, 2802)**

15 49. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
16 indemnify his employee for losses caused by the employer's want of ordinary
17 care."

18 50. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
19 his or her employee for all necessary expenditures or losses incurred by the
20 employee in direct consequence of the discharge of his or her duties..."

21 51. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
22 term 'necessary expenditures or losses' shall include all reasonable costs,
23 including but not limited to, attorney's fees incurred by the employee enforcing
24 the rights granted by this section."

25 52. During the relevant time period, among other things, Defendant failed to
26 reimburse Plaintiff and other similarly aggrieved employees for all necessary
27 expenditures or losses incurred in direct consequence of their employment, for
28 example, including for use of cell phones, tools, mileage, uniform maintenance
and related expenses they incurred for work.

1 53. During the relevant time period, Defendant was required to reimburse Plaintiff
2 and all other similarly aggrieved employees for all expenditures or losses
3 caused by the employer's want of ordinary care and/or incurred in direct
4 consequence of the discharge of their duties, but failed to indemnify and
5 reimburse Plaintiff and all other similarly aggrieved employees in violation of
6 Labor Codes §§ 2800 and 2802.

7 54. As a direct and proximate result, Plaintiff and all other similarly aggrieved
8 employees have suffered, and continue to suffer, substantial losses, related to
9 the use and enjoyment of such monies to be reimbursed.
10

11 **FAILURE TO MAINTAIN RECORDS AND PAY MINIMUM WAGES**
12 **(Labor Code §§ 1174, 1174.1, 1197, and 1197.1)**

13 55. Defendant further failed to keep Plaintiff's and other similarly aggrieved
14 employees payroll records showing the hours worked daily and the wages paid
15 pursuant to Labor Code §1174. Plaintiff further alleges that Defendant failed to
16 pay Plaintiff and other similarly aggrieved employees proper minimum wages,
17 in violation of Labor Code § 1197. Plaintiff and other similarly aggrieved
18 employees have been deprived of their rights as set forth in this First Amended
19 Complaint, including, but not limited to, payment of minimum and/or actual
20 wages for all hours worked.

21 56. As a result, Plaintiff and all other similarly aggrieved employees have suffered
22 injury pursuant to Labor Code sections 1174.5 and 1197.1..
23

24 **FAILURE TO PROVIDE PAID SICK LEAVE**
25 **(Labor Code § 246, 247.5 and 248.5)**

26 57. Furthermore, Defendant violated Labor Code §§ 246 and 248.5 by failing to
27 provide Plaintiff and other similarly aggrieved employees with paid sick leave.
28 Plaintiff and other similarly aggrieved employees were entitled to accrued paid

1 sick leave, however, Plaintiff and other similarly aggrieved employees did not
2 accrue any paid sick leave at all, and if Plaintiff and other similarly aggrieved
3 employees took time off from work that would have qualified as sick leave,
4 they would receive no wages. Defendant also failed to keep records of hours
5 worked and paid sick day in violation of Labor Code § 247.5..
6

7
8 **PRAYER FOR RELIEF**

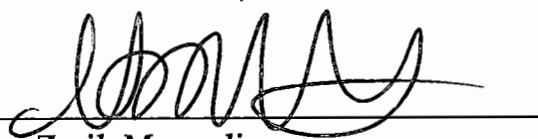
9 **WHEREFORE**, Plaintiff on behalf of the State of California, himself, and other
10 similarly aggrieved employees, prays for relief and judgment against Defendant as
11 follows:

12 A. Civil penalties under Labor Code Section 2699 (75% payable to the
13 LWDA and 25% payable to aggrieved employees); and

14 B. For such other relief that the Court may deem just and proper, including
15 prejudgment interest and costs.

16 DATED: ^{Apr.} ~~Mar.~~ 6, 2022

MOORADIAN LAW, APC

17
18 By: 

Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and similarly
aggrieved employees

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On April 6, 2022, I served on the parties of record in this action the foregoing document(s) described as:

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

☒ **VIA ELECTRONIC SERVICE** – Based on a court order or agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to be sent to the above persons listed at their e-mail addresses on the attached service list on the date stated thereon. I did not received, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on April 6, 2022 at Calabasas, California.

PROOF OF SERVICE