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Attorneys for Plaintiff
JUAN TORRES-GUTIERREZ

Assigned for all Purposes

Judge James J. Di Cesare

C-16

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JUAN TORRES-GUTIERREZ, as an
aggrieved employee and private attorney
general,

Plaintiff,

vs.

PARAGON INDUSTRIES, INC. DBA
BEDROSIANS, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01201805-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT**

DEMAND FOR TRIAL BY JURY

**(1) VIOLATION OF CALIFORNIA
LABOR CODE § 2699, ET SEQ.
(PRIVATE ATTORNEYS
GENERAL ACT)**

1 Plaintiff JUAN TORRES-GUTIERREZ (“Plaintiff”), as an aggrieved employee and as a
2 private attorney general, based upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants PARAGON INDUSTRIES, INC.
7 dba BEDROSIANS, and DOES 1 THROUGH 50 (hereinafter also collectively referred to as
8 “Defendants”) as a representative action on behalf of himself and certain other current and former
9 non-exempt employees of Defendants against whom one or more of the alleged violations was
10 committed (hereinafter collectively referred to as the “Aggrieved Employees”) pursuant to
11 California Labor Code sections 2698, *et seq.* Plaintiff is an aggrieved employee against whom
12 one or more of the alleged violations was committed. The civil penalties sought by Plaintiff
13 exceed the minimal jurisdiction limits of the Superior Court and will be established according to
14 proof at trial.

15 2. The Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
17 except those given by statute to other courts. The statutes under which this action is brought do
18 not specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over Defendants because, upon information and belief,
20 Defendants are citizens of California, have sufficient minimum contacts in California, or
21 otherwise intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play and
23 substantial justice.

24 4. Venue is proper in this Court because, upon information and belief, Defendants
25 maintain offices, have agents, and/or transact business in the State of California, County of
26 Orange.

27 **PARTIES**

28 5. Plaintiff JUAN TORRES-GUTIERREZ is an individual residing in the State of

California, County of Orange.

6. Defendant PARAGON INDUSTRIES, INC. dba BEDROSIANS, is and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California, and registered to do business in the state of California.

7. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at all times mentioned acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by its conduct.

8. Defendants are and at all times herein mentioned were, (a) conducting business in the County of Orange, State of California, and (b) the employer of Plaintiff consistent with the California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

9. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and Aggrieved Employees so as to make each of said Defendants employers and employers jointly liable under the statutory provisions set forth herein.

GENERAL ALLEGATIONS

10. Defendants are importers and distributors of tile, ceramic and stone products, with several showrooms and service centers available to commercial, institutional, industrial, and residential customers.

11. Defendants employed Plaintiff to work as an hourly, non-exempt employee from approximately September 2010 to approximately March 20, 2020.

1 12. At all relevant times set forth herein, Defendants employed Plaintiff and
2 Aggrieved Employees as hourly-paid or non-exempt employees.

3 13. Throughout the time period involved in this case, Defendants had the authority to
4 hire and terminate Plaintiff and Aggrieved Employees; to directly or indirectly control work rules,
5 working conditions, wages, working hours, and conditions of employment of Plaintiff and
6 Aggrieved Employees; and to hire and terminate the employment of Plaintiff and Aggrieved
7 Employees.

8 14. At all times herein mentioned, Defendants were subject to the Labor Code of the
9 State of California and the applicable Industrial Welfare Commission Orders.

10 15. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in
11 an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
12 employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring
13 Plaintiff and Aggrieved Employees to work off the clock without compensation, thereby failing
14 to pay them for all hours worked, including minimum and overtime wages. Defendants also
15 implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately
16 recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved
17 Employees all wages owed. In addition, Defendants routinely failed to permit Plaintiff and the
18 Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of
19 California law. Defendants also failed to reimburse Plaintiff and the Aggrieved Employees for all
20 necessary business-related expenses.

21 16. Throughout the time period involved in this case, Defendants have implemented
22 policies and practices which failed to provide Plaintiff and Aggrieved Employees with timely and
23 duty-free meal periods. Defendants routinely failed to relieve Plaintiff and Aggrieved Employees
24 of all duties during their meal periods, regularly failed to relinquish control over Plaintiff and
25 Aggrieved Employees during their meal periods, regularly failed to permit Plaintiff and
26 Aggrieved Employees a reasonable opportunity to take their meal periods, and regularly impeded
27 or discouraged Plaintiff and Aggrieved Employees from taking thirty (30) minute uninterrupted
28 meal breaks no later than the end of their fifth hour of work and/or from taking a second thirty

(30) minute uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of meal periods taken by Plaintiff and Aggrieved Employees.

17. Throughout the time period involved in this case, Defendants did not adequately inform Plaintiff and Aggrieved Employees of their right to take meal periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of meal periods for Plaintiff and Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff and Aggrieved Employees in a way the prohibited them from taking timely and duty-free meal periods, and to require Plaintiff and Aggrieved Employees to work through their meal periods, for which they were not compensated.

18. Throughout the time period involved in this case, Defendants failed to pay Plaintiff and Aggrieved Employees premium wages for meal periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all meal periods or payment of one additional hour of pay at their regular rate of pay when a meal period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide legally compliant meal periods to Plaintiff and Aggrieved Employees, and routinely failed pay one additional hour of pay to Plaintiff and Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

19. Throughout the time period involved in this case, Defendants have implemented policies and practices which prohibited Plaintiff and Aggrieved Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff and Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

20. Throughout the time period involved in this case, Defendants did not adequately

1 inform Plaintiff and Aggrieved Employees of their right to take rest periods under California law.
2 Moreover, Defendants systematically disregarded their own written policies regarding the
3 provision and timing of rest periods for Plaintiff and Aggrieved Employees. Instead, Defendants'
4 actual policy and practice was to schedule Plaintiff and Aggrieved Employees in a way that
5 regularly prohibited them from taking timely and duty free rest periods, and to regularly require
6 Plaintiff and Aggrieved Employees to work through their rest periods.

7 21. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
8 and Aggrieved Employees premium wages for rest periods that were missed, late, interrupted, or
9 shortened in violation of California law. Defendants knew or should have known that Plaintiff
10 and Aggrieved Employees were entitled to receive all rest periods or payment of one additional
11 hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or
12 interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit
13 Plaintiff and Aggrieved Employees to take duty-free rest periods, and failed to pay one additional
14 hour of pay to Plaintiff and Aggrieved Employees at their regular rate of pay when a rest period
was missed, short, late and/or interrupted.

15 22. Throughout the time period involved in this case, Defendant regularly required
16 Plaintiff and Aggrieved Employees to perform work off-the-clock. Although Defendants
17 prohibited overtime, Defendants still regularly required Plaintiff and Aggrieved Employees
18 complete all of their assigned duties. To do so, Plaintiff and Aggrieved Employees were regularly
19 required to perform work off-the-clock for which they were not compensated.

20 23. Throughout the time period involved in this case, Defendants implemented policies
21 that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time
22 worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees all wages owed.

23 24. Throughout the time period involved in this case, Plaintiff and Aggrieved
24 Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

25 25. Throughout the time period involved in this case, Defendants regularly failed to
26 pay overtime compensation to Plaintiff and Aggrieved Employees when they worked in excess
27 of eight (8) hours in a single work day and/or forty (40) hours in a single work week, or in excess
28

1 of twelve (12) hours in a single work day and/or eighty (80) hours in a single work week.
2 Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to
3 receive certain wages for overtime or double overtime compensation and that they were not
4 receiving wages for overtime or double overtime compensation.

5 26. Throughout the time period involved in this case, Defendants failed to pay
6 overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based on
7 regular rates of pay correctly calculated to include all applicable remuneration.

8 27. Throughout the time period involved in this case, Defendants regularly failed to
9 pay Plaintiff and the Aggrieved Employees at least minimum wages for all hours worked.
10 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
11 to receive at least minimum wages for all hours worked and that they were not receiving at least
12 minimum wages for all hours worked. Defendants' failure to pay minimum wages included, *inter*
13 *alia*, failing to pay Plaintiff and the Aggrieved Employees at the required minimum wage pursuant
14 to California law, and requiring Plaintiff and the Aggrieved Employees to perform work off the
15 clock.

16 28. Throughout the time period involved in this case, Defendants regularly failed to
17 pay Plaintiff and the Aggrieved Employees all wages owed to them upon discharge or resignation.
18 Defendant knew or should have known that Plaintiff and the Aggrieved Employees were entitled
19 to receive all wages owed to them upon termination within the time permissible under California
20 Labor Code section 202. Plaintiff and the Aggrieved Employees did not receive payment of all
21 final wages owed to them upon discharge or resignation, including overtime compensation and
22 minimum wages within any time permissible under California Labor Code section 202.

23 29. Throughout the time period involved in this case, Defendants regularly failed to
24 pay Plaintiff and Aggrieved Employees all wages within any time permissible under California
25 law, including, *inter alia*, California Labor Code section 204. Defendants knew or should have
26 known that Plaintiff and Aggrieved Employees were entitled to receive all wages owed to them
27 during their employment. Plaintiff and Aggrieved Employees did not receive payment of all
28 wages, including overtime compensation, minimum wages, and meal and rest period premiums,

1 within any time permissible under California Labor Code section 204.

2 30. Throughout the time period involved in this case, Defendants regularly failed to
3 provide complete or accurate wage statements to Plaintiff and Aggrieved Employees. Defendants
4 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
5 complete and accurate wage statements in accordance with California law, but, in fact, they did
6 not receive complete and accurate wage statements from Defendants. The deficiencies included,
7 *inter alia*, the failure to include the total number of hours worked, the actual gross wages earned,
8 and the correct rates of pay.

9 31. Throughout the time period involved in this case, Defendants regularly failed to
10 keep complete or accurate payroll records for Plaintiff and Aggrieved Employees. Defendants
11 knew or should have known that Defendants were required keep complete and accurate payroll
12 records for Plaintiff and Aggrieved Employees in accordance with California law, but, in fact, did
13 not keep complete and accurate payroll records.

14 32. Throughout the time period involved in this case, Defendants regularly failed to
15 maintain accurate records relating to Plaintiff's and the Aggrieved Employees' meal periods, total
16 daily hours, hours per pay period, and applicable pay rates.

17 33. Throughout the time period involved in this case, Defendants failed to reimburse
18 Plaintiff and the Aggrieved Employees for all necessary business-related expenses, including but
19 not limited to the use of their personal vehicle, and purchase and maintenance articles in
20 compliance with Defendants' dress code. Defendants knew or should have known that
21 Defendants were required to reimburse Plaintiff and the Aggrieved Employees for all necessary
22 business-related expenses and costs, but, in fact, failed to do so in violation of California law.

23 34. Throughout the time period involved in this case, Defendants knew or should have
24 known that they had a duty to compensate Plaintiff and Aggrieved Employees pursuant to
25 California law. Defendants had the financial ability to pay such compensation, but willfully,
26 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and Aggrieved
27 Employees that they paid all wages owed to them, all in order to increase Defendants' profits.

28 35. On or about March 3, 2021, Plaintiff notified Defendants via certified mail and

1 filed an online PAGA claim notice with the California Labor and Workforce Development
2 Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in
3 this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor
4 Code section 2698 *et seq.* in accord with Cal. Lab. Code section 2699.3. As of the filing of this
5 Complaint, the LWDA has not responded to Plaintiff’s PAGA claim notice.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of California Labor Code § 2699, Et Seq.)**

8 **(Against All Defendants)**

9 36. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
10 every allegation set forth above.

11 37. Plaintiff brings his first and only cause of action as a representative action on
12 behalf of himself and similarly Aggrieved Employees in the capacity as a private attorney general
13 pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et*
14 *seq.* (“PAGA”).

15 38. PAGA specifically provides for a private right of action to recover civil penalties
16 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
17 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
18 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
19 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
20 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
21 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
22 2699(a).

23 39. Plaintiff was employed by Defendants and the Labor Code violations alleged
24 above were committed against him during his time of employment. Plaintiff and the other non-
25 exempt employees of Defendants are therefore “aggrieved employees” as defined by California
26 Labor Code section 2699(c) in that they are all current or former employees of Defendants, and
27 one or more of the alleged violations were committed against them.

28 40. As set forth in detail above, during all times relevant to this Action, Defendant

1 has routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
2 Codes by:

- 3 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
4 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 5 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
6 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 7 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
8 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
9 hour of premium pay for meal period violations in violation of Labor Code §§
10 226.7 and 512.
- 11 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to
12 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
13 Employees an additional hour of premium pay for rest period violations in
14 violation of Labor Code §§ 226.7 and 512.
- 15 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of
16 their employment in violation of Labor Code § 203.
- 17 f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed
18 during employment in violation of Labor Code § 204.
- 19 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
20 itemized wage statements in violation of Labor Code § 226.
- 21 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved
22 Employees' meal periods, total daily hours, hours per pay period, total wages and
23 compensation, and correct pay rates in violation of Labor Code § 1174(d) and the
24 applicable IWC Wage Order.
- 25 i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary
26 business-related expenses in violation of Labor Code §§ 2800 and 2802.

27 41. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
28 individually and on behalf of the Aggrieved Employees and the State of California, requests and

1 is entitled to recover penalties against Defendants for the Labor Code violations described above,
2 including but not limited to penalties under California Code of Regulations Title sections 11010
3 and 11070, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3,
4 1174.5 and 1197.1, and any and all additional penalties and sums as provided by the California
5 Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an
6 amount to be shown according to proof at trial.

7 42. Plaintiff has exhausted his administrative remedies pursuant to Labor Code §
8 2699.3. On March 3, 2021, Plaintiff, through his counsel of record, by online filing with the Labor
9 and Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, notified
10 Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders
11 that Defendants have violated, including the facts and theories to support the violations, and of
12 Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee
13 required under Labor Code § 2699.3. As of the filing of this Complaint, more than 65 days have
14 elapsed since the mailing of Plaintiff’s March 3, 2021 notice, and the Labor and Workforce
15 Development Agency has not indicated that it intends to investigate the violations discussed in
16 the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself
17 and other Aggrieved Employees pursuant to Labor Code § 2699.3.

18 43. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties
20 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney’s fees and costs
21 pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, and
24 as a private attorney general, prays for relief and judgment against Defendants, jointly and
25 severally, as follows:

26 **As to the First Cause of Action**

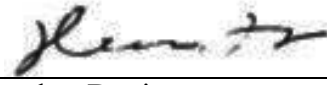
27 1. For statutory attorneys’ fees and costs pursuant to 2699(g)(1) of California Labor
28 Code;

1 2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
2 210, 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code
3 and/or other applicable statutes; and

4 3. For such other relief as the Court deems just and proper.

5 Dated: May 20, 2021

PROTECTION LAW GROUP, LLP

7
8 By: 

Heather Davis
Amir Nayebdadash
Priscilla Gamino
Attorneys for Plaintiff
JUAN TORRES-GUTIERREZ

DEMAND FOR TRIAL BY JURY

Plaintiff JUAN TORRES-GUTIERREZ demands a trial by jury as to all causes of action triable by a jury.

Dated: May 20, 2021

PROTECTION LAW GROUP, LLP

By: 

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Attorneys for Plaintiff
JUAN TORRES-GUTIERREZ