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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

DONALD GARNER AND AJAX
VELASCO GARCIA, individuals, on behalf
of the State of California, as private attorney
generals,

PLAINTIFF,

v.

ERICKSON FRAMING CA LLC, a
Delaware limited liability company;
ERICKSON BUILDING COMPONENTS
LLC, a Delaware limited liability company;
ERICKSON FRAMING OPERATIONS
LLC, a Delaware limited liability company;
and DOES 1 through 50, inclusive,

DEFENDANTS.

CASE NO. S-CV-0046737

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code
§§ 200, 201, 202, 203, 204, 206.5, 210,
226, 226.3, 226.7, 510, 512, 516, 558,
1174, 1174.5, 1182.12, 1194, 1197,
1197.1, 1198, 2802, 6401 and 6403 as well
as IWC Wage Order No. 16-2001

1. Plaintiff Ajax Velazco Garcia, on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”) complains of Defendant Erickson Framing CA LLC and the Doe Defendants and each of them, as follows:

2. Plaintiff Donald Garner, on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”) complains of Defendants Erickson Framing CA LLC, Erickson Building Components LLC, and Erickson Framing Operations LLC the Doe Defendants (collectively hereafter the “Defendants”) and each of them, as follows:

I.

INTRODUCTION

3. This is a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

- (1) all non-exempt, hourly employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California at any point from March 2, 2020¹ and continuing into the present. (“Non-Exempt Aggrieved Employees”);
- (2) all employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California and who were paid in whole and/or in part on a piece rate basis at any point from March 2, 2020 and continuing into the present. (“Piece Rate Aggrieved Employees”);
- (3) all individuals who were employed by Erickson Framing CA, LLC or its predecessor or merged entities in California as a non-exempt hourly employee or non-exempt piece rate employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 2, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);
- (4) all individuals who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than

¹ The first PAGA Notice was submitted on March 2, 2021. Since Defendant failed to timely produce Plaintiff Garcia's records, Plaintiff Garcia added additional claims under PAGA based upon Defendant's willful and conscious refusal to provide Plaintiff Garcia with his employment records.

1 six (6) hours as a non-exempt hourly employee or non-exempt piece rate employee or
2 other similar position March 2, 2020 and continuing into the present. (“Meal Period
3 Aggrieved Employees”);

4 (5) all individuals who were employed by Erickson Framing CA, LLC, or its
5 predecessor, merged or related entities in California as a non-exempt hourly
6 employee or non-exempt piece rate employee, or other similar position, who worked
7 one or more shifts of more than four (4) hours in length or major fraction thereof
8 from March 2, 2020 and continuing into the present. (“Rest Period Aggrieved
9 Employee”);

10 (6) all employees who were employed by Erickson Framing CA, LLC or its predecessor,
11 merged or related entities in California and who reported for work, but were
12 furnished less than half of his/her usual or scheduled day’s work at any point from
13 March 2, 2020 and continuing into the present. (“Reporting Time Pay Aggrieved
14 Employees”);

15 (7) all individuals who were employed by Erickson Framing CA, LLC or its predecessor,
16 merged or related entities for one or more pay periods in California and whose
17 employment concluded at any time between March 2, 2020 and continuing into the
18 present; (“Late Payment Aggrieved Employee”);

19 4. The groups referenced in paragraph 3 may also all collectively be referred to
20 herein as aggrieved employees, other aggrieved employees, and/or all aggrieved employees where
21 appropriate.

22 5. Plaintiffs, on behalf of the State of California as a private attorney general brings
23 claims for alleged Labor Code violations committed against himself and all aggrieved employees
24 presently or formerly employed by Defendant during the liability period pursuant to Labor Code
25 § 2698, *et seq.* seeking penalties for Defendant violations of California Labor Code §§ 200, 201,
26 202, 203, 204, 206.5, 210, 222.5, 226, 226.3, 226.7, 432, 510, 512, 516, 558, 1174, 1174.5,
27 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 6401 and 6403 as well as IWC Wage Order
28 No. 16-2001.

6. Plaintiffs hereby incorporate by reference all claims in the Plaintiff Garcia’s March
2, 2021 PAGA Notice (Exhibit 1), Plaintiff Garcia’s April 16, 2021 PAGA Notice (Exhibit 2),
and Plaintiff Garner’s March 5, 2021 PAGA Notice (Exhibit 3).

7. Based upon the allegations herein, Plaintiffs and all aggrieved employees are aggrieved employees within the meaning of Labor Code § 2698, *et seq.*

8. Plaintiffs and all aggrieved employees worked for Defendant at one or more of its locations in California between March 2, 2020 and the present.

II.

FACTUAL BACKGROUND

9. Plaintiffs are informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, ERICKSON FRAMING CA LLC, ERICKSON BUILDING COMPONENTS LLC, ERICKSON FRAMING OPERATIONS LLC, and/or DOES 1 through 50 (collectively, “Defendants” or “ERICKSON”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

10. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

11. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

12. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiffs and the other aggrieved employees. Each Defendant had the power to hire and fire Plaintiffs and the aggrieved employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or

1 permitted Plaintiffs and the other aggrieved employees to work and/or “engaged” Plaintiffs and
2 the other aggrieved employees so as to create a common-law employment relationship. As joint
3 employers of Plaintiffs and the other aggrieved employees, Defendants are jointly and severally
4 liable for the civil penalties to the state of California under the law.

5 13. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
6 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and the
7 aggrieved employees.

8 14. Plaintiffs and the aggrieved employees were at all times pertinent hereto, non-
9 exempt employees for the purposes of overtime, meal periods, and rest periods. Plaintiffs and all
10 aggrieved employees were employed by Defendants in California for at least one pay period
11 between March 2, 2020 and the present.

12 15. Upon information and belief, Plaintiffs and the other aggrieved employees were
13 covered by California Industrial Welfare Commission Occupational Wage Order No. 16-2001.

14 16. Labor Code § 1198.5(a) provides that “every current and former employee, or his
15 or her representative, has the right to inspect and receive a copy of the personnel records that the
16 employer maintains relating to the employee’s performance or to any grievance concerning the
17 employee.” Pursuant to Labor Code § 1198.5(b) requires the employer to “make the contents of
18 those personnel records available for inspection to the current or former employee, or his or her
19 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days
20 from the date the employer receives a written request.” “If an employer fails to permit a current or
21 former employee, or his or her representative, to inspect or copy personnel records within the
22 times specified in this section, or times agreed to by mutual agreement as provided in this section,
23 the current or former employee or the Labor Commissioner may recover a penalty of seven
24 hundred fifty dollars (\$750) from the employer.

25 17. Similarly, an employee may request a copy of their pay records within the
26 meaning of Labor Code § 226(a) in accordance with Labor Code § 226(c). Under Labor Code §
27 226(c), “an employer who receives a written or oral request to inspect or receive a copy of
28 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with

1 the request as soon as practicable, but no later than 21 calendar days from the date of the request.”
2 Pursuant to Labor Code § 226(f) if an employer fails to comply with a request pursuant to Labor
3 Code § 226(f), the employer must pay the employee a penalty of seven hundred fifty dollars.

4 18. When responding to a records request, Labor Code § 226 obligates an employer to
5 provide either a duplicate of an employee’s itemized wage statements or “a computer-generated
6 record that accurately shows all of the following information:

7 (1) gross wages earned, (2) total hours worked by the employee, except as provided in
8 subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if
9 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
10 made on written orders of the employee may be aggregated and shown as one item, (5) net
11 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
12 name of the employee and only the last four digits of his or her social security number or
13 an employee identification number other than a social security number, (8) the name and
14 address of the legal entity that is the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
16 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each hourly
18 rate by the employee

19 19. In addition, Labor Code § 432 provides that “[i]f an employee or applicant signs
20 any instrument relating to the obtaining or holding of employment, he shall be given a copy of the
21 instrument upon request.”

22 20. On March 2, 2021, Plaintiff Garcia submitted a request for records under Labor
23 Code §§ 226, 432, and 1198.5 via Certified Mail (Nos. 7020 1810 0000 4230 5261 and 7020
24 1810 0000 4230 5254). The USPS tracking records indicate that Defendant Erickson Framing CA
25 LLC received the record request to its 2 addresses on March 8 and 9, 2021. Pursuant to Labor
26 Code §§ 226, 432, 1198.5 and 6408(d) as well as his time records within the meaning of Section
27 7(A)(3) and (C) of the IWC Wage Order, Plaintiff Garcia’s pay records were due within 21 days
28 of the receipt of his request and his personnel records within 30 days of receipt. In accordance
with the mailbox rule, Defendants are presumed to have received a copy of the March 2, 2021
PAGA Notice and record request and the USPS records confirm that they in fact did.² However,

² Assuming *arguendo* Defendant tries to argue that it did not receive the initial PAGA Notice, it would not impact Plaintiff Garcia’s standing to bring a PAGA case. In *Munoz v. Giumarra Vineyards Corp.*, No. 1:09-CV-0703 AWI JLT, 2015 U.S. Dist. LEXIS 122447, at *9 (E.D. Cal. Sep. 11, 2015), a former postal employee admitted to intercepting and signing for the PAGA notice. As the Court explained, service was still effective because PAGA only

1 Defendants did not timely produce Plaintiff Garcia's personnel file and or his pay records within
2 the meaning of Labor Code section 226 or 1198.5 and in fact have never provided such records.

3 21. Plaintiff Garcia alleges that Defendant engaged in the same or similar conduct
4 described above with respect the other aggrieved employees who submit record requests in an
5 effort to conceal its unlawful practices, to avoid complying with California's record request laws,
6 and/or as part of a regular and consistent policy and practice. As a result of the foregoing and
7 notwithstanding the fact that Plaintiff Garcia also experienced many of the other Labor Code
8 violations addressed herein, Plaintiff Garcia is an aggrieved employee under PAGA and possesses
9 standing to pursue claims against Defendant for the claims identified in this notice.

10 22. Labor Code § 1197 states the California requirement that employees must be paid
11 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
12 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
13 "any employee receiving less than the legal minimum wage...to recover in a civil action the
14 unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 16-2001
15 obligates employers to pay each employee minimum wages for all hours worked.

16 23. Similarly, Labor Code § 510 requires an employer to compensate an employee
17 who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the
18 first eight (8) hours worked on the seventh consecutive day no less than one and one-half times
19 the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to
20 compensate employees at no less than twice the regular rate of pay when an employee works
21 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
22 of work. In accordance with Labor Code § 1194, Plaintiffs and the other aggrieved employees
23 could not agree to work for a lesser wage.

24 24. In addition, Labor Code § 1198 provides that "the maximum hours of work and the
25 standard conditions of labor fixed by the commission shall be the maximum hours of work and
26

27 (continued...)

28 requires that a PAGA Notice be mailed and not actually received. *Id.* ("The statute only requires "written notice by
certified mail" and does not make mention of actual receipt.").

1 the standard conditions of labor for employees. The employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful.”

4 25. From March 2, 2020 and continuing into the present, Defendants adopted an
5 automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’
6 worth of an employee’s pay regardless of whether or not the employee took a meal period and/or
7 the full amount of their meal period. As a result of Defendants’ policy and practice of
8 automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the
9 aggrieved employee took a meal period and/or the length of the meal period, Defendants regularly
10 failed to pay Plaintiffs and all aggrieved employees for all hours worked in violation of Labor
11 Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage
12 Order No. 16-2001 and Labor Code § 510.

13 26. From March 2, 2020 and continuing into the present, Defendants’ rounded time
14 entries for Plaintiffs and the other aggrieved employees in a manner that was unlawful and non-
15 neutral because Defendant failed to provide compensation for all hours worked well beyond 15
16 minutes and failed to round up in the employee’s favor due, including, but not limited to, its off-
17 the-clock policies. This includes, but is not limited to, the rounding of the time entires associated
18 with meal periods. As such, Defendants failed to pay Plaintiffs wages for all hours worked
19 (including overtime hours) and misclassified hours worked as regular hours as a result of its auto-
20 deduction and unlawful time recording policies and procedures as discussed herein.

21 27. Defendants also engaged in a common policy and practice of arbitrarily recording
22 Plaintiffs and the other aggrieved employees’ work periods as ending at earlier times and then
23 requiring them and/or suffering and permitting them to continue to work off-the-clock without
24 compensation. For instance, Defendants would record Plaintiff Garcia and the other aggrieved
25 employee’s work day as having ended earlier when in fact Plaintiff Garcia and other aggrieved
26 employees’ worked until 4:00 pm.

27 28. Moreover, when Defendants instituted its “new” piece rate and/or incentive
28 compensation policies and practices in 2020, Defendants failed to record the time associated with

1 Plaintiffs and the other aggrieved employee's work periods were significantly longer and also
2 included unrecorded and/or underreported (by the Company and its supervisors) time punches.
3 Notably, Defendants knew that it was suffering and permitting and requiring Plaintiffs and the
4 other aggrieved employees to perform work off-the-clock and without compensation and/or
5 sufficient compensation.

6 29. At all times relevant hereto, Defendants were legally responsible for ensuring the
7 accuracy of its time records and cannot rely upon time records that it knew were false and/or
8 statements by employees as the California Supreme Court explained less than a week ago.
9 *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) ("It is the
10 employer's duty to maintain accurate time records" and that the employer could not rely upon
11 certifications from employees where the information provided to the employees was inaccurate
12 and/or incomplete).

13 30. Labor Code § 512 requires employers to provide employees with thirty (30)
14 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
15 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
16 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
17 may not employ an employee for a work period of more than ten (10) hours, without providing
18 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
19 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

20 31. Similarly, IWC Wage Order No. 16-2001 prohibits an employer from
21 "employ[ing] any person for a work period of more than five (5) hours without a meal period of
22 not less than 30 minutes. IWC Wage Order No. 16-2001 further obligates employers to provide
23 an employee to "pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the meal period is not provided. Labor Code section 1198
25 prohibits an employer from requiring an employee to work beyond the "standard conditions of
26 labor fixed by the commission...or under conditions of labor prohibited by the order."

27 32. From March 2, 2020 and continuing into the present, Defendants adopted an
28 automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes'

1 worth of an employee's pay regardless of whether or not the employee took a meal period and/or
2 the full amount of their meal period. As a result of Defendants' policy and practice of
3 automatically deducting thirty (30) minutes' worth of pay regardless of whether or not the
4 aggrieved employee took a meal period and/or the length of the meal period, Defendants regularly
5 failed to authorize and permit Plaintiffs and all aggrieved employees to take lawful thirty (30)
6 minute uninterrupted meal periods, failed to accurately document whether or not employees
7 received lawful meal periods and/or their length. Instead, Defendants' provided no meal periods,
8 late meal periods, and/or short meal periods to Plaintiffs and the aggrieved employees.
9 Defendants also did not provide did not provide a meal period premium when it failed to provide
10 any meal period, a timely first meal period, and/or short meal periods in violation of Labor Code
11 §§ 226.7 and 512.

12 33. Further, here, as in *Donohue*, from March 2, 2020 and continuing into the present,
13 Defendants engaged in a common pattern and practice of rounding meal punches in violation of
14 Labor Code §§ 226.7 and 512. This includes, but is not limited, to falsifying that employees took
15 thirty-minute meal periods when in fact such meal periods were not received and/or were often
16 less than thirty (30) minutes in length.

17 34. Defendants also failed to authorize and permit Plaintiffs and the other aggrieved
18 employees to receive lawful meal periods, failed to advise them of their right to such meal
19 periods, and failed to authorize and permit them to take timely first meal periods. Defendant's
20 meal period policies and practices also disincentivized and discouraged Plaintiffs and the other
21 aggrieved employees from taking timely first meal periods within the first five (5) hours of their
22 shift. Defendant's understaffing policies and practices also pressured, coerced, and forced
23 employees to take untimely first meal periods due to a lack of sufficient coverage.

24 35. Defendants also failed to pay Plaintiffs and the other meal period premiums for
25 each workday that the employees did not receive a compliant meal period and/or at the proper
26 rate. Labor Code § 226.7 provides "an employer shall not require an employee to work during a
27 meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
28 regulation, standard, or order of the Industrial Welfare Commission ("IWC").

1 36. Similarly, IWC Wage Order No. 16-2001, prohibits an employer from
2 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
3 not less than 30 minutes. IWC Wage Order No. 16-2001 further obligate employers to provide an
4 employee to “pay the employee one (1) hour of pay at the employee’s regular rate of
5 compensation for each workday that the meal period is not provided. Accordingly, for each day
6 that Plaintiffs and all aggrieved employees did not receive compliant meal periods, they are
7 entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order
8 No. 16-2001. Unfortunately, Plaintiffs and the other aggrieved employees were not compensated
9 with one (1) hours’ worth of pay at their regular rate of compensation when they were not
10 provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order
11 No. 16-2001.

12 37. Labor Code § 226.7 provides “an employer shall not require an employee to work
13 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
14 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

15 38. IWC Wage Order No. 16-2001, expressly requires employers to designate an area
16 for rest periods that can include the employees’ immediate work area. As such, under IWC Wage
17 Order No. 16-2001 specifically requires employers, including Defendant, to not only “authorize
18 and permit employees to take rest periods,” but also to provide instructions about where they can
19 be taken. Unfortunately, Plaintiffs and the aggrieved employees were not authorized or permitted
20 to take rest periods nor were they provided with instructions about rest periods could be taken as
21 required by IWC Wage Order No. 16-2001.

22 39. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001, Defendants
23 failed to provide Plaintiffs and all aggrieved employees with rest periods of not less than ten (10)
24 minutes for every major fraction of four (4) hours worked.

25 40. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
26 be violated...any provision regulating hours and days of work in any order of the Industrial
27 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
28 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
2 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee.” For purposes of Labor Code § 558, Plaintiffs and the aggrieved employees seek only
6 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
7 not any underpaid wages. Pursuant to Labor Code § 558 Plaintiffs and the other aggrieved
8 employees are entitled to civil penalties based upon Defendants’ violations of Labor Code §§
9 226.7, 510, and 512.

10 41. IWC Wage Order No. 16-2001, § 5 provides that “[e]ach workday that an
11 employee is required to report to the work site and does report, but is not put to work or is
12 furnished less than half of his/her usual or scheduled day’s work, the employer shall pay him/her
13 for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more
14 than four (4) hours at the employee’s regular rate of pay, which shall not be less than the
15 minimum wage.”

16 42. Labor Code § 200 provides that “Wages” includes all amounts for labor performed
17 by employees of every description, whether the amount is fixed or ascertained by the standard of
18 time, task, piece, commission basis, or other method of calculation.” Moreover, Labor Code §
19 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the
20 commission shall be the maximum hours of work and the standard conditions of labor for
21 employees. The employment of any employee for longer hours than those fixed by the order or
22 under conditions of labor prohibited by the order is unlawful.

23 43. On several occasions between March 2, 2020 and the present, Plaintiffs and the
24 other aggrieved employees were required to report to work and would stay for approximately two
25 (2) hours and would be sent home for lack of work despite being scheduled to work eight (8)
26 hours or more. On these occasions, Defendants failed to pay Plaintiffs and the other aggrieved
27 employees reporting time pay consistent with IWC Wage Order No. 16-2001 and Labor Code §§
28 200 and 200-204, 210, and 1198.

1 44. Further, even if Defendants paid aggrieved employees meal/rest period premiums
2 for non-compliant meal or rest periods during the statutory period applicable to their claims,
3 Defendants still violated Labor Code §§ 226.7, 512, and 1198 by failing to comply with
4 California’s meal period laws. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73,
5 84 (2020) (“employers can pay an additional hour of wages as a remedy for failing to provide
6 meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy
7 ‘does not excuse a section 226.7 violation.’”) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53
8 Cal.4th 1244, 1256 (2012). Thus, Defendants are still liable for PAGA penalties even if it paid
9 them a meal or rest period premiums.

10 45. As to Plaintiffs and all aggrieved employees, Defendants also failed to provide
11 accurate itemized wage statements in accordance with Labor Code § 226(a) (1), (2), (3), (5), and
12 (9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to
13 furnish an itemized wage statement in writing showing:

- 14 (1) gross wages earned;
15 (2) total hours worked by the employee;
16 (3) the number of piece-rate units earned and any applicable piece rate if the
17 employee is paid on a piece rate;
18 (4) all deductions, provided that all deductions made on written orders of the employee
19 may be aggregated and shown as one item;
20 (5) net wages earned;
21 (6) the inclusive dates of the period for which the employee is paid;
22 (7) the name of the employee and only the last four digits of his or her social security
23 number or an employee identification number other than a social security number;
24 (8) the name and address of the legal entity that is the employer...;
25 (9) all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee...

27 Similarly, Labor Code § 226(e) provides:

- 28 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by
an employer to comply with subdivision (a) is entitled to recover the greater of all
actual damages or fifty dollars (\$50) for the initial pay period in which a violation
occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
is entitled to an award of costs and reasonable attorney’s fees.
(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.
(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
promptly and easily determine from the wage statement alone one or more of the
following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,

46. Plaintiffs contend that Defendants issued itemized wage statements to them and the other aggrieved employees that did not include the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code sections 226(a)(3) and 226(a)(9). Plaintiffs further allege that Defendant failed to include incentive pay when calculating and paying overtime and listed the time associated with incentive pay as "0.00" and the rates associated with incentive pay as "\$0.00." This includes, but is not limited to, listing the rates and units for both piece rate and incentive pay and hourly rates both as "0.00" such that Plaintiffs and the other aggrieved employees could not determine from the wage statement alone such information:

Erickson Framing CA LLC 8350 Industrial Avenue Roseville, CA 95678-5946								
0402867	AJAX I VELAZCO GARCIA			1/24/2021	1/30/2021	139928	2/5/2021	
EMPLOYEE ID	EMPLOYEE NAME			PERIOD BEG.	PERIOD END.	CHECK NO.	DATE	
EARNINGS		RATE	HRS/UNITS	CURRENT AMOUNT	YEAR TO DATE	DEDUCTIONS	CURRENT AMOUNT	YEAR TO DATE
Overtime Pay	0.00	0.00		0.00	168.00	CALF INC TAX	8.46	42.76
Regular Pay	14.00	40.00		560.00	2,308.50	CALF SDI	12.35	57.43
Regular Pay 2	0.00	0.00		42.59	189.31	DENTAL INSURANCE	4.44	22.20
Regular Pay 3	0.00	0.00		460.00	2,287.50	FED INC TAX	1.88	72.59
						FICA/EMPLOYEE	63.80	296.68
						FICAMED/EMPLOYEE	14.92	69.38
						VOLUNTARY PLANS	12.39	61.95
						MEDICAL INSURANCE	29.19	145.95
PAY RATE		CURRENT EARNINGS		CURRENT DEDUCTIONS		NET PAY	Y.T.D.EARNINGS	Y.T.D. DEDUCTIONS
14.00		1,062.59		147.43		915.16	4,953.31	768.94
								4,184.37

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1 47. In addition, due to Defendants' failure to pay Plaintiffs and all aggrieved
2 employees all minimum wages, overtime wages, meal period premiums, and rest period
3 premiums, the wage statements issued by Defendants do not indicate the correct amount of gross
4 wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
6 Plaintiffs are aggrieved employees within the meaning of PAGA and Defendants have violated
7 Labor Code §226(a) (1), (2), (3), (5), and (9) with respect to Plaintiffs and all aggrieved
8 employees.

9 48. Moreover, from March 2, 2020 and continuing into the present because
10 Defendants did not record the time Plaintiffs and the other aggrieved employees spent working
11 off-the-clock and deducted time from their records for meal periods that were interrupted, missed,
12 and/or rounded (and therefore time for which they should have been paid), Defendants did not list
13 the correct amount of gross wages and net wages earned by Plaintiffs and the aggrieved
14 employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
15 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs
16 and the other aggrieved employees, in violation of section 226(a)(2), and failed to list the
17 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
18 number of hours worked at each hourly rate, in violation of section 226(a)(9)).

19 49. In addition from March 2, 2020 and continuing into the present Defendants did not
20 calculate Plaintiffs' and the other aggrieved employees' regular rate of pay correctly for purposes
21 of paying overtime, Defendants did not list the correct amount of gross wages earned by Plaintiffs
22 and the other aggrieved employees in compliance with section 226(a)(1). For the same reason,
23 Defendants failed to list the correct amount of net wages earned by Plaintiffs and the other
24 aggrieved employees in violation of section 226(a)(5). Defendants also failed to correctly list all
25 applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and
26 correct rates of pay for premium wages, in violation of section 226(a)(9).

27 50. In addition to violating Labor Code § 226(a), Defendants also knowingly and
28 intentionally failed to pay Plaintiffs and all aggrieved employees meal period premiums, rest

1 periods premiums, minimum wages, and overtime wages including at the proper rates. Moreover,
2 Plaintiffs and all aggrieved employees also suffered legal “injury” for purposes of Labor Code
3 section 226(e) insofar as they were unable to readily and easily determine from the wage
4 statements themselves the information required to be set forth by Section 226(a), the information
5 provided by Defendants was confusing and inaccurate. In addition, Plaintiffs and the aggrieved
6 employees were unable to determine at all the total hours worked by the employee, the gross
7 wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period
8 and the corresponding number of hours worked at each hourly rate by the employee for the
9 reasons discussed above.

10 51. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
11 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
12 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
13 for each violation in a subsequent citation, for which the employer fails to provide the employee a
14 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
15 explained in detail above, Defendants failed to provide Plaintiffs and the other aggrieved
16 employees with accurate itemized wage statements. Accordingly, Plaintiffs and the other
17 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations
18 of Labor Code § 226(a).

19 52. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
20 any employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays.” Defendants pays Plaintiffs and all aggrieved
22 employees on a weekly basis.

23 53. Due to Defendants’ failure to pay Plaintiffs and all aggrieved employees all
24 minimum wages and/or wages for all hours worked, overtime wages, meal period premiums, and
25 rest period premiums Defendants failed to timely pay Plaintiffs and all aggrieved employees all
26 wages owed within seven (7) days of the close of the payroll period in accordance with Labor
27 Code § 204(d) on a regular and consistent basis.
28

1 54. Labor Code § 210 provides that “in addition to, an entirely independent and apart
2 from, any other penalty provided in this article, every person who fails to pay the wages of each
3 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
4 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
5 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
6 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
7 the faulty compensation policies and practices described in detail above and Defendant’s failure
8 to pay Plaintiffs all aggrieved employees within seven (7) days of the close of the payroll period,
9 the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.
10 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
11 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
12 at the proper rate in accordance with a local wage ordinance).

13 55. Labor Code § 1174 provides that each employer shall keep “payroll records
14 showing the hours worked daily by and the wages paid to...employees employed
15 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
16 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

17 56. As explained in detail above, Defendant failed to maintain accurate records of the
18 total hours worked by Plaintiffs and the other aggrieved employees. Thus, Defendant violated
19 Labor Code §§ 1174 and 1174.5.

20 57. For instance, although Plaintiff Garcia only worked for Defendants for an
21 approximate 3 month period in the summer of 2020, the wage statements issued by Defendants to
22 Plaintiff Garcia indicate that even without taking into account the security/bag check related meal
23 period issues, she did not receive proper lawful meal periods on at least six (6) occasions.
24 Defendants engaged in the same policies and practices with respect to all aggrieved employees
25 and denoted some—but not necessarily all—of such instances by providing meal period
26 premiums under the pay code “Adj Meal Period Penalty.”

27 58. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
28 causes to be violated...any provision regulating hours and days of work in any order of the

1 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
2 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
3 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
4 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
5 period for which the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
7 employee.” For purposes of Labor Code § 558, Plaintiffs seek only the penalties assessed as civil
8 penalties and not any underpaid wages pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

9 59. With respect to Rest Periods, Labor Code § 226.7 provides “an employer shall not
10 require an employee to work during a meal or rest or recovery period mandated pursuant to an
11 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
12 Commission (“IWC”). Under IWC Wage Order Nos. 7-2001 and 9-2001, an employer must
13 authorize and permit all employees to take ten (10) minute duty free rest periods for every major
14 fraction of four hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257,
15 269 (concluding that “during rest periods employers must relieve employees of all duties and
16 relinquish control over how employees spend their time.”).

17 60. Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 7-2001 and 9-2001,
18 Defendant failed to provide Plaintiffs and all Rest Period Aggrieved Employees with duty-free
19 rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.
20 Instead, Defendants regularly and consistently required Plaintiffs and the other aggrieved
21 employees to undergo security and bag checks during meal and rest periods (including, but not
22 limited to, searching employees bags containing food during the meal periods if they tried to
23 reenter the premises).

24 61. During the statutory period applicable to their claims, Defendants required
25 Plaintiffs and all aggrieved employees to go through security checks when entering and leaving
26 the premises at the start of their shift, if they attempted to go outside during a meal/rest period,
27 and at the conclusion of their shift. Although Defendants maintained a common policy and
28 practice of requiring Plaintiffs and the all aggrieved employees to stand/wait in line for security

1 checks in lines and searched their bags and subjected them to other security measures regardless
2 of whether or not they brought a bag, Defendants failed to relieve employees of all control during
3 rest periods and disincentivized and discouraged Plaintiffs and the aggrieved employees from
4 taking and/or receiving lawful duty-free rest periods and/or from using all ten (10) minutes for
5 their own purposes.

6 62. At all times relevant hereto, when Plaintiffs and the aggrieved employees
7 attempted to go outside, they were required to go through security and bag checks while leaving
8 the premises and reentering such that they were never relieved of their job duties. For instance,
9 Defendants searched Plaintiffs when she attempted to reenter the premises among other unlawful
10 conduct. Such conduct is unlawful and requires an employer to provide both a rest period
11 premium and to pay the employee for the wages associated with unlawful search. Through
12 Defendants' policy and practice of conducting security and bag searches on employees who were
13 on breaks, Defendants violated Labor Code §§ 226.7 and 1198.

14 63. Moreover, at all times relevant hereto, Defendants also actively interfered with and
15 discouraged employees from receiving lawful rest periods through its unlawful security check and
16 bag check policies and practices. Requiring employees to go through security and bag checks
17 while attempting to leave the premises to eat, make phone calls, smoke and/or perform other
18 activities was intended and had the effect of discouraging employees from taking off-premises
19 and duty-free rest periods. Plaintiffs and the other aggrieved employees' ability to take meal/rest
20 periods was impeded and discouraged because they were required to forgo parts of their meal and
21 rest periods in order to go outside.

22 64. Further, at all times relevant hereto even when Defendants paid Plaintiffs and the
23 other aggrieved employees rest period premiums, Defendants still violated Labor Code §§ 226.7,
24 512, and 1198 by failing to comply with California's meal period laws. *See e.g. Kim v. Reins*
25 *International California, Inc.*, 9 Cal.5th 73, 84 (2020) ("employers can pay an additional hour of
26 wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have
27 held that payment of this statutory remedy 'does not excuse a section 226.7 violation.'") (*quoting*
28 *Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1256 (2012)). Thus, Defendants are still

1 liable for PAGA penalties even if it paid them a rest period premium because Plaintiffs and the
2 aggrieved employees were regularly not authorized and permitted to take lawful duty-free rest
3 periods.

4 65. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
5 causes to be violated...any provision regulating hours and days of work in any order of the
6 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
7 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
8 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
9 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
10 period for which the employee was underpaid...” Based upon the above factual allegations,
11 Plaintiffs and the aggrieved employees are entitled to recover civil penalties under Labor Code §
12 558 and not any underpaid wages. *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175 (2019) and not any
13 underpaid wages.

14 66. Labor Code § 226 obligates employers, semi-monthly or at the time of each
15 payment to furnish an itemized wage statement in writing showing:

- 16 (1) gross wages earned;
17 (2) total hours worked by the employee;
18 (3) the number of piece-rate units earned and any applicable piece rate if the
19 employee is paid on a piece rate;
20 (4) all deductions, provided that all deductions made on written orders of the employee
21 may be aggregated and shown as one item;
22 (5) net wages earned;
23 (6) the inclusive dates of the period for which the employee is paid;
24 (7) the name of the employee and only the last four digits of his or her social security
25 number or an employee identification number other than a social security number;
26 (8) the name and address of the legal entity that is the employer...;
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee...

67. Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
employer to comply with subdivision (a) is entitled to recover the greater of all actual
damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney’s fees.
(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

1 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
2 employer fails to provide accurate and complete information as required by any one or
3 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
4 and easily determine from the wage statement alone one or more of the following:

5 (i) The amount of the gross wages or net wages paid to the employee during the
6 pay period or any of the other information required to be provided on the itemized
7 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
8 (a).

9 (ii) Which deductions the employer made from gross wages to determine the net
10 wages paid to the employee during the pay period. Nothing in this subdivision
11 alters the ability of the employer to aggregate deductions consistent with the
12 requirements of item (4) of subdivision (a).

13 (iii) The name and address of the employer and, if the employer is a farm labor
14 contractor, as defined in subdivision (b) of Section 1682, the name and address of
15 the legal entity that secured the services of the employer during the pay period.

16 (iv) The name of the employee and only the last four digits of his or her social
17 security number or an employee identification number other than a social security
18 number.

19 68. Labor Code § 226(a)(1), (2), (5), and (9) require employers semimonthly or at the
20 time or each payment of wages, furnish each of his or her employees, an accurate itemized
21 statement in writing showing the gross wages earned, the total hours worked by the employee, all
22 deductions, the net wages earned, as well as all applicable hourly rates in effect during the pay
23 period and the corresponding number of hours worked at each hourly rate by the employee.

24 69. Due to Defendants' failure to pay Plaintiffs and all aggrieved employees all
25 minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage
26 statements issued by Defendants do not indicate the correct amount of gross wages earned, the
27 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiffs are
aggrieved employees within the meaning of PAGA and Defendants have violated Labor Code
§226(a)(1), (2), (5), and (9) with respect to Plaintiffs and all aggrieved employees.

70. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
for each violation in a subsequent citation, for which the employer fails to provide the employee a
wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the

1 extent that Labor Code § 226.3 applies, Plaintiffs also seek such penalties on behalf of herself and
2 the other aggrieved employees.

3 71. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
4 any employment are due and payable twice during each calendar month, on days designated in
5 advance by the employer as the regular paydays.” Defendant pays Plaintiffs and all aggrieved
6 employees on a weekly basis.

7 72. Due to Defendants’ failure to pay Plaintiffs and all aggrieved employees all
8 minimum wages, overtime wages, meal period premiums, and rest period premiums, Defendants
9 failed to timely pay Plaintiffs and all aggrieved employees all wages owed within seven (7) days
10 of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and
11 consistent basis.

12 73. Labor Code § 210 provides that “in addition to, an entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
15 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
16 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
17 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
18 the faulty compensation policies and practices described in detail above and Defendants’ failure
19 to pay Plaintiffs and all aggrieved employees within seven (7) days of the close of the payroll
20 period, the State of California is entitled to recover penalties under Labor Code § 210 through
21 PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an
22 award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely
23 pay wages at the proper rate in accordance with a local wage ordinance).

24 74. Pursuant to Labor Code §§ 201-202, an employer must provide an employee
25 wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor
26 Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
27 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
28 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

1 75. As described in detail above, Defendants failed to pay Plaintiffs and other
2 aggrieved employees whose employment concluded all wages owed, including but not limited to
3 minimum wages and/or wages for all hours worked, overtime wages, meal period premiums, rest
4 period premiums, and reporting time pay within the time constraints proscribed in Labor Code §§
5 201-202 at the time of their termination/separation.

6 76. Separate and independent of the foregoing, Defendant also failed to timely pay
7 Plaintiff Garcia and the other aggrieved employees any wages whatsoever within the time
8 constraints of Labor Code §§ 201-202 and instead paid employees days after their termination
9 and/or resignation (if advance notice was provided) or more than 72 hours after their resignation
10 if no advance notice was provided.

11 77. Further, California Labor Code § 222.5 requires employers to pay for the costs an
12 employee incurs for obtaining any medical or physical examination taken.

13 78. At all times relevant herein, Defendants implemented, on a company-wide basis,
14 an employer-imposed requirement that Plaintiffs and other aggrieved employees undergo a
15 mandatory physical examination and/or drug test, but required them to do so at their own
16 expense. As stated, Defendants had a company-wide policy requiring that all employees,
17 including Plaintiff Garner and other aggrieved employees, travel to a specified medical facility
18 using their own personal vehicles to undergo physical examinations and/or drug testing. At all
19 times, Defendants were in control of scheduling the date and time for the examination and/or
20 testing, selecting the provider/facility where the examination and/or testing was to take place, and
21 determining the scope of the examination and/or testing.

22 79. During the relevant time period, Plaintiff Garner was instructed by Defendants to
23 travel to a U.S. HealthWorks medical facility in Rocklin, California, and obtain a drug test.
24 Plaintiff Garner followed Defendants' instructions, traveled to the facility Defendants selected,
25 and underwent the drug testing. Plaintiff Garner was required to travel to and from a medical
26 facility selected by Defendants using his own vehicle, and spent time waiting at the medical
27 facility and undergoing the requisite testing.

1 80. However, Defendants did not compensate Plaintiffs and other aggrieved
2 employees for the time they spent traveling to and from the medical facilities, for the time they
3 spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel
4 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or not
5 paying for all costs Plaintiff Garner and other aggrieved employees incurred obtaining mandatory
6 physical examinations and/or drug testing is in violation of California Labor Code § 222.5.
7 Aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
8 sections 2699(a), (f), and (g).

9 81. Further, California Labor Code § 6401 provides that employers must furnish and
10 use safety devices and safeguards, and adopt and use practices, means, methods, operations, and
11 processes which are reasonably adequate to render the employment and place of employment safe
12 and healthy. California Labor Code § 6401 further provides that an employer must do everything
13 reasonably necessary to protect the life, safety and health of its employees.

14 82. Defendants, on a company-wide basis, failed to provide Plaintiff Garner and other
15 Aggrieved Employees with personal protective equipment, such as steel-toed boots, to keep them
16 safe in the workplace. Despite the fact that Defendants required employees to wear certain
17 protective equipment, including steel-toed boots, Defendants failed to provide such reasonably
18 necessary equipment to Plaintiff Garner and other aggrieved employees to keep them safe. Thus,
19 Defendants' failure to provide Plaintiff Garner and other aggrieved employees with safety devices
20 and safeguards violates Labor Code sections 6401 and 6403. Aggrieved employees are therefore
21 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 83. California Labor Code section 2802 provides that an employer must reimburse
23 employees for all necessary expenditures and losses incurred by the employee in the performance
24 of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing
25 off their cost of doing business and operating expenses on to their employees. *Cochran v.*
26 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order,
27 IWC Wage Order 1-2001, provides that: "[w]hen tools or equipment are required by the employer
28 or are necessary to the performance of a job, such tools and equipment shall be provided and

1 maintained by the employer, except that an employee whose wages are at least two (2) times the
2 minimum wage provided herein may be required to provide and maintain hand tools and
3 equipment customarily required by the trade or craft.”

4 84. First, as described above, during the relevant time period Defendants had a
5 company-wide policy of requiring Plaintiff Garner and aggrieved employees to travel in their own
6 personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not
7 reimburse them for their travel expenses, including mileage. Defendants maintained and
8 implemented a company-wide policy of requiring employees to travel to a medical facility on
9 their own time and using their own personal vehicles to undergo mandatory drug testing and/or
10 physical examinations. At all times, Defendants were in control of scheduling the date and time
11 for the drug testing and/or physical examinations, selecting the provider or facility where the
12 testing and/or physical examinations were to take place, and determining the scope of the testing
13 and/or physical examinations. Defendants gave Plaintiff Garner and aggrieved employees strict
14 instructions to obtain drug testing and/or physical examinations, and Plaintiff Garner and
15 aggrieved employees underwent the testing and/or physical examinations for the sole benefit of
16 Defendants.

17 85. As described above, Plaintiff Garner followed Defendants’ instructions, traveled in
18 his personal vehicle to the U.S. HealthWorks medical facility in Rocklin, California, and
19 underwent Defendants’ drug testing, but was not reimbursed for his mileage to and from the
20 medical facility. Although Defendants required Plaintiff Garner and aggrieved employees to
21 undergo drug testing and/or physical examinations, Defendants failed to reimburse them for their
22 travel expenses.

23 86. Moreover, during the relevant time period, Defendants had a company-wide policy
24 of requiring Plaintiff Garner and aggrieved employees to utilize their own personal vehicles to
25 carry out company business, but failed to reimburse them for all costs of travel, including
26 mileage. For example, Plaintiff Garner and aggrieved employees were assigned to projects in
27 specific geographic areas within the greater Sacramento region, but were sometimes required to
28 work on projects in other areas. Specifically, as stated, although Plaintiff Garner primarily

1 worked in the greater Sacramento region near his home, he was occasionally required to drive
2 further to work in Chico, California, but was never reimbursed for any of his mileage.
3 Accordingly, Plaintiff Garner and aggrieved employees were not reimbursed for travel required as
4 part of their work-related duties.

5 87. Second, during the relevant time period, Defendants, on a company-wide basis,
6 required Plaintiff Garner and aggrieved employees to purchase tools and equipment that were
7 necessary for the completion of their work-related duties. For example, Defendants provided
8 Plaintiff Garner a list of branded construction tools, and Plaintiff Garner was required to purchase
9 each tool on this list as a condition of working for Defendants. In addition, Defendants, on a
10 company-wide basis, mandated that Plaintiff Garner and aggrieved employees purchase special
11 safety shoes, such as steel-toed boots, which they were required to wear while at work. Plaintiffs
12 and aggrieved employees purchased steel-toed boots to wear at Defendants' project sites, but
13 were not reimbursed for these costs. Thus, Defendants failed to provide tools and equipment to
14 Plaintiff Garner and aggrieved employees, forcing them to procure their own, and failed to
15 reimburse Plaintiff Garner and aggrieved employees for these costs.

16 88. Third, during the relevant time period, Defendants had a company-wide policy of
17 requiring Plaintiff Garner and aggrieved employees to utilize their own personal cellular phones
18 to carry out their job duties, but failed to reimburse them for the costs of their work-related
19 cellular phone expenses. Plaintiff Garner and aggrieved employees were required to use their
20 personal cellular phones to fulfill their work-related responsibilities, such as calling Defendants'
21 management when scheduled to work "on-call" shifts. Although Defendants required Plaintiff
22 Garner and aggrieved employees to utilize their personal cellular phones to carry out their work-
23 related responsibilities, Defendants failed to reimburse them for this cost.

24 89. Defendants could have provided Plaintiffs and aggrieved employees with the
25 actual tools for use on the job, such company vehicles, tools and equipment, and company
26 phones. Or, Defendants could have reimbursed employees for the costs of their mileage, travel
27 expenses, tools and equipment, and cellular phones. Instead, Defendants passed these operating
28

1 costs off onto Plaintiff Garner and aggrieved employees. At all relevant times, Plaintiffs did not
2 earn at least two (2) times the minimum wage.

3 90. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiffs and aggrieved employees violates California Labor Code section 2802.
5 Defendants have intentionally and willfully failed to reimburse Plaintiffs and other aggrieved
6 employees for necessary business-related expenses and costs. Aggrieved employees are therefore
7 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

8 91. Further, California Labor Code section 206.5 prohibits employers from requiring
9 employees to execute releases of a claim or right "on account of wages due, or to become due, or
10 made as an advance on wages to be earned, unless payment of those wages has been made. A
11 release required or executed in violation of the provisions of this section shall be null and void as
12 between the employer and the employee."

13 92. During the relevant time period, Defendants required Plaintiffs and other
14 aggrieved employees to release their claims for meal and/or rest period violations, as well as their
15 claims for uncompensated hours worked, as a condition of receiving their paychecks. For
16 example, prior to receiving his paycheck, Defendants required Plaintiff Garner to verify that he
17 had received all of his rest periods and to sign a box on his timesheet that states, "I certify that the
18 hours below are true and correct."

19 93. Defendants compelled Plaintiffs and other aggrieved employees to sign these false
20 verifications when they, in fact, were not provided all meal or rest periods and/or had not been
21 able to accurately record all of the hours they had worked. Defendants' policy and practice of
22 requiring Plaintiffs and other aggrieved employees to release their claims for meal or rest period
23 violations and/or their claims for uncompensated hours worked, as a condition to receiving their
24 wages, is in violation of California Labor Code section 206.5. Aggrieved employees are therefore
25 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 94. Plaintiffs fully and completely exhausted their administrative remedies under
27 PAGA prior to proceeding with this action. Plaintiffs filed their PAGA Notices online with the
28 Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to

1 Defendants setting forth the facts and theories of the violations alleged against Defendants, as
2 prescribed by Labor Code § 2698 *et seq.*, as seen in **Exhibits 1-3** which are incorporated herein
3 by reference. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA.
4 Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received
5 by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five (65)
6 calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore, entitled to
7 commence and proceed with a civil action pursuant to Labor Code § 2699.

8 **III.**

9 **JURISDICTION AND VENUE**

10 95. This Court has subject matter jurisdiction over any and all causes of action
11 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
12 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
13 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
14 arises under the laws of the State of California or is subject to adjudication in the courts of the
15 State of California.

16 96. This Court has personal jurisdiction over Defendants because Defendants have
17 caused injuries in the County of Placer including at its location in Roseville, California through
18 their acts, and by their violation of the California Labor Code and California state common law.

19 97. Venue is proper in this Court, because Defendant ERICKSON FRAMING CA
20 LLC filed a Statement of Information form with the California Secretary of State designating a
21 principal place of business in Roseville, County of Placer, in accordance with California
22 Corporations Code section 2105(a)(3).

23 98. Venue as to each Defendants is proper in this judicial district, pursuant to Code of
24 Civil Procedure § 395. Defendants operates within California and does business within Placer
25 County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all
26 “employees” within the State of California and Placer County.

27 **IV.**

28 **PARTIES**

1 **A. PLAINTIFFS**

2 99. Plaintiff Donald Garner is a resident of Forest Hill, in Placer County, California.
3 Defendants employed Plaintiff Garner as an hourly paid, non-exempt Carpenter during at least
4 one (1) pay period within one (1) year of the filing of his PAGA Notice.

5 100. Plaintiff Ajax Velazco Garcia is a resident of California, who worked for
6 Defendants in several different cities and counties in California as a non-exempt employee within
7 the past year. This includes, but is not limited to during the pay period of January 24, 2021 to
8 January 30, 2021.

9 101. Plaintiffs and all aggrieved employees are, and at all times pertinent hereto, have
10 been classified as employees by Defendants. Defendants hires employees to work in California.

11 102. Upon information and belief, Plaintiffs and all aggrieved employees are covered
12 by California Industrial Welfare Commission Occupational Wage Orders No. 16-2001.

13 103. Plaintiffs represent the state of California in prosecuting claims against Defendants
14 on behalf of several groups of employees defined as:

15 (1) all non-exempt, hourly employees who were employed by Erickson Framing CA,
16 LLC or its predecessor, merged or related entities in California at any point from
17 March 2, 2020 and continuing into the present. (“Non-Exempt Aggrieved
Employees”);

18 (2) all employees who were employed by Erickson Framing CA, LLC or its predecessor,
19 merged or related entities in California and who were paid in whole and/or in part on
20 a piece rate basis at any point from March 2, 2020 and continuing into the present.
21 (“Piece Rate Aggrieved Employees”);

22 (3) all individuals who were employed by Erickson Framing CA, LLC or its predecessor
23 or merged entities in California as a non-exempt hourly employee or non-exempt
24 piece rate employee or other similar position and who worked a shift of more than
25 eight (8) hours in a day and/or forty (40) hours in a week during a pay period from
March 2, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);

26 (4) all individuals who were employed by Erickson Framing CA, LLC or its predecessor,
27 merged or related entities in California who worked one or more shifts of more than
28 six (6) hours as a non-exempt hourly employee or non-exempt piece rate employee or
other similar position March 2, 2020 and continuing into the present. (“Meal Period

Aggrieved Employees”);

(5) all individuals who were employed by Erickson Framing CA, LLC, or its predecessor, merged or related entities in California as a non-exempt hourly employee or non-exempt piece rate employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from March 2, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);

(6) all employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California and who reported for work, but were furnished less than half of his/her usual or scheduled day’s work at any point from March 2, 2020 and continuing into the present. (“Reporting Time Pay Aggrieved Employees”);

(7) all individuals who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities for one or more pay periods in California and whose employment concluded at any time between March 2, 2020 and continuing into the present; (“Late Payment Aggrieved Employee”).

104. The groups referenced in paragraph 86 may also all collectively be referred to herein as aggrieved employees, other aggrieved employees, and/or all aggrieved employees where appropriate.

B. DEFENDANTS

105. ERICKSON FRAMING CA LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

106. ERICKSON BUILDING COMPONENTS LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

107. ERICKSON FRAMING OPERATIONS LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer

1 whose employees are engaged throughout this county, the State of California, or the various states
2 of the United States of America.

3 108. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
5 Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure
6 § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
7 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
8 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
9 capacities of the Defendants designated hereinafter as DOES when such identities become
10 known. Plaintiffs further allege that the Doe Defendants include California residents including
11 individuals who could be brought into the action under Labor Code § 558.1.

12 109. Plaintiffs are informed and believe, and based thereon allege, that each Defendants
13 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
14 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
15 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
16 employer and/or joint employer of Plaintiffs and the other aggrieved employees.

17 **V.**

18 **FIRST CAUSE OF ACTION**

19 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
20 **FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS**
21 **OF LABOR CODE §§ 200, 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 510, 512, 516,**
22 **558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401 and 6403 as well as IWC**
23 **Wage Order No. 16-2001**

24 110. Plaintiffs, on behalf of the State of California, reallege and incorporates by
25 reference all previous paragraphs.

26 111. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
27 § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 200, 201, 202, 203, 204,
28 206.5, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1,
1198, 2802, 6401 and 6403 as well as IWC Wage Order No. 16-2001.

1 112. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs
2 and all other aggrieved employees are entitled to penalties in an amount to be shown at the time
3 of trial subject to the following formula unless a civil penalty is already proscribed under the
4 Labor Code:

5 \$100 for the initial violation per employee per pay period; and

6 \$200 for each subsequent violation per employee per pay period.

7 113. These penalties will be allocated 75% to the Labor Workforce Development
8 Agency and 25% to the affected employees.

9 114. In addition, Plaintiffs and the aggrieved employees seek the default penalty
10 provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
11 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
12 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
13 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
14 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
15 of Section 226.”

16 115. Labor Code § 210 provides that “in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
19 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” Pursuant to
22 Labor Code § 210, “[t]welve and one-half percent of the penalty recovered shall be paid into a
23 fund within the Labor and Workforce Development Agency dedicated to educating employers
24 about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the
25 General Fund.” As a result of the faulty compensation policies and practices described in detail
26 above, the State of California is entitled to recover penalties under Labor Code § 210 through
27 PAGA.
28

116. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...” Based upon the above factual allegations related to meal period, rest period, and overtime violations, Plaintiffs and the aggrieved employees are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For penalties under Labor Code § 2698, *et seq.* for Plaintiffs and all aggrieved employees because of Defendants’ violation of Labor Code §§ 200, 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401 and 6403 as well as IWC Wage Order No. 16-2001;
2. An award providing for payment of costs of suit;
3. An award of attorneys’ fees;
4. An award of pre-judgment and post-judgment interest as provided by law; and
5. Such other and further relief as this Court may deem proper and just.

Dated: May 21, 2021

WINSTON LAW GROUP, P.C.

By: David S. Winston
DAVID S. WINSTON
Attorney for Plaintiff Ajax Velazco Garcia

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Dated: May 21, 2021

CAPSTONE LAW APC

By: /s/ Orlando Villalba

BEVIN ALLEN PIKE

ORLANDO VILLALBA

ROXANNA TABATABAEEPOUR

Attorney for Plaintiff Donald Garner

Exhibit 1

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 610 ♦ LOS ANGELES, CA 90035 ♦ (424) 288-4568

October 28, 2020

Via Online Filing with the LWDA & by Certified Mail to Defendant

Erickson Framing CA LLC
250 N Beck Ave
Chandler, AZ 85226

Erickson Framing CA LLC
8350 Industrial Avenue
Roseville, CA 95678

Re: Ajax Velazco Garcia vs. Erickson Framing CA LLC. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as Erickson Framing CA LLC- California Labor Code §2699 Penalties

Gentlepersons:

This firm represents Ajax Velazo Garcia (“Plaintiff” or “Mr. Garcia”) and a proposed group of current and former employees working for Defendant Erickson Framing CA LLC (“Defendant”) in California for violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 as well as IWC Wage Order No. 16-2001.

- (1) all non-exempt, hourly employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California at any point from one (1) year prior to the date of this letter and continuing into the present. (“Non-Exempt Aggrieved Employees”);
- (2) all employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California and who were paid in whole and/or in part on a piece rate basis at any point from one (1) year prior to the date of this letter and continuing into the present. (“Piece Rate Aggrieved Employees”);
- (3) all individuals who were employed by Erickson Framing CA, LLC or its predecessor or merged entities in California as a non-exempt hourly employee or non-exempt piece rate employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from one (1) year prior to the date of this letter and continuing into the present. (“Overtime Aggrieved Employees”);

- (4) all individuals who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or non-exempt piece rate employee or other similar position from one year prior to the date of this letter and continuing into the present. (“Meal Period Aggrieved Employees”);
- (5) all individuals who were employed by Erickson Framing CA, LLC, or its predecessor, merged or related entities in California as a non-exempt hourly employee or non-exempt piece rate employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from one year prior to the date of this letter and continuing into the present. (“Rest Period Aggrieved Employee”);
- (6) all employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California and who reported for work, but were furnished less than half of his/her usual or scheduled day’s work at any point from one (1) year prior to the date of this letter and continuing into the present. (“Reporting Time Pay Aggrieved Employees”);
- (7) all individuals who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities for one or more pay periods in California and whose employment concluded at any time between one (1) year prior to the submission of this letter and continuing into the present; (“Late Payment Aggrieved Employee”);

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all aggrieved employees.¹ Specifically, Plaintiff contends that Defendant issued itemized wage statements to him and the other aggrieved employees that did not include the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code sections 226(a)(3) and 226(a)(9). This includes, but is not limited to, listing the rates and units both as “0.00” such that Plaintiff and the other aggrieved employees could not determine from the wage statement alone such information:

¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

Erickson Framing CA LLC 8350 Industrial Avenue Roseville, CA 95678-5946							
0402867 EMPLOYEE ID	AJAX I VELAZCO GARCIA EMPLOYEE NAME			1/24/2021 PERIOD BEG.	1/30/2021 PERIOD END.	139928 CHECK NO.	2/5/2021 DATE
EARNINGS	RATE	HRS./UNITS	CURRENT AMOUNT	YEAR TO DATE	DEDUCTIONS	CURRENT AMOUNT	YEAR TO DATE
Overtime Pay	0.00	0.00	0.00	168.00	CALF INC TAX	8.46	42.76
Regular Pay	14.00	40.00	560.00	2,308.50	CALF SDI	12.35	57.43
Regular Pay 2	0.00	0.00	42.59	189.31	DENTAL INSURANCE	4.44	22.20
Regular Pay 3	0.00	0.00	460.00	2,287.50	FED INC TAX	1.88	72.59
					PTCA/EMPLOYEE	63.80	296.68
					FICAMED/EMPLOYEE	14.92	69.38
					VOLUNTARY PLANS	12.39	61.95
					MEDICAL INSURANCE	29.19	145.95
PAY RATE	CURRENT EARNINGS	CURRENT DEDUCTIONS	NET PAY	Y.T.D.EARNINGS	Y.T.D. DEDUCTIONS	Y.T.D. NET PAY	
14.00	1,062.59	147.43	915.16	4,953.31	768.94	4,184.37	

In addition, Defendant also failed to authorize and permit employees to take lawful meal periods and/or rest period, failed to allow employees to take timely meal periods within the first five (5) hours, failed to permit employees to take a full thirty (30) minute meal period and instead only permitted them less time to eat, falsified time records to show that employees received a meal period or complete meal period when no such meal period occurred resulting in the auto-deduction of time and improper withholding of minimum wage and overtime wages, failed to timely pay wages during and after employment, failed to provide accurate itemized wage statements, failed to provide reporting time pay when the aggrieved employees were required to report, but were provided with less than half their usual or scheduled day's work, and failed to maintain accurate time records among other issues.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 1194, 1197, 1198 and IWC Wage Order No. 16-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 16-2001 obligates employers to pay each employee minimum wages for all hours worked.

These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

Similarly, Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order No. 16-2001 and Labor Code § 510. Defendant’s rounded time entries for Plaintiff and the other aggrieved employees were also unlawful and non-neutral because Defendant failed to provide compensation for all hours worked well beyond 15 minutes and failed to round up in the employee’s favor due, including, but not limited to, its off-the-clock policies. As such, Defendant failed to pay Plaintiff wages for all hours worked (including overtime hours) and misclassified hours worked as regular hours as a result of its auto-deduction and unlawful time recording policies and procedures as discussed herein.

Defendant also engaged in a common policy and practice of arbitrarily recording Plaintiff and the other aggrieved employees’ work periods as ending at earlier times and then requiring them and/or suffering and permitting them to continue to work off-the-clock without compensation. For instance, Defendant would record Plaintiff and the other aggrieved employee’s work day as having ended when in fact Plaintiff and the other aggrieved employees’ worked until 4:00 pm. When Defendant instituted its “new” piece rate compensation policies and practices in 2020, Defendant failed to record the time associated with Plaintiff and the other aggrieved employee’s work periods were significantly longer and also included unrecorded and/or underreported (by the Company and its supervisors) time punches. Notably, Defendant knew that it was suffering and permitting and requiring Plaintiff and the other aggrieved employees to perform work off-the-clock and without compensation and/or sufficient compensation. Defendant is legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained less than a week ago. *Donohue*

v. *Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) (“It is the employer's duty to maintain accurate time records” and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 16-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order No. 16-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 16-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); see also *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.² The California Supreme Court recently held in *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” In order to defeat this presumption, an employer must show not only that it advised employees “of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period.” *Id.* at *33 This presumption applies not only to missed meal periods, but also “to records

² Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13–0056–DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

showing short and delayed meal periods as well.” *Id.* at *34.

Moreover, an employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to authorize and permit Plaintiff and all aggrieved employees to take lawful thirty (30) minute uninterrupted meal periods, failed to accurately document whether or not employees received lawful meal periods and/or their length. Instead, Defendant’s provided no meal periods, late meal periods, and/or short meal periods to Plaintiff and the aggrieved employees. Defendant also did not provide did not provide a meal period premium when it failed to provide any meal period, a timely first meal period, and/or short meal periods in violation of Labor Code §§ 226.7 and 512.

Further, here, as in *Donohue*, Defendant engaged in a common pattern and practice of rounding meal punches in violation of Labor Code §§ 226.7 and 512. This includes, but is not limited, to falsifying that employees took thirty-minute meal periods when in fact such meal periods were not received and/or were often less than thirty (30) minutes in length.

Defendant also failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, and failed to authorize and permit them to take timely first meal periods. Defendant’s meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. Defendant’s understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

Defendants also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate.

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

Similarly, IWC Wage Order No. 16-2001, prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligate employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001. Unfortunately, Plaintiff and the other aggrieved employees were not compensated with one (1) hours’ worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001.

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order No. 5-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code §§ 226.7 and 512 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 16-2001

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for

under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001, Defendants failed to provide Plaintiff and all aggrieved employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. IWC Wage Order No. 16-2001, expressly requires employers to designate an area for rest periods that can include the employees' immediate work area. As such, under IWC Wage Order No. 16-2001 specifically requires employers, including Defendant, to not only “authorize and permit employees to take rest periods,” but also to provide instructions about where they can be taken. Unfortunately, Plaintiff and the aggrieved employees were not authorized or permitted to take rest periods nor were they provided with instructions about rest periods could be taken as required by IWC Wage Order No. 16-2001.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 16-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 200 and 1198 BY FAILING TO PROVIDE REPORTING TIME PAY

IWC Wage Order No. 16-2001, § 5 provides that “[e]ach workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day’s work, the employer shall pay him/her for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

Labor Code § 200 provides that “Wages” includes all amounts for labor performed by

employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Moreover, Labor Code § 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

On several occasions, Plaintiff and the other aggrieved employees were required to report to work and would stay for approximately two (2) hours and would be sent home for lack of work despite being scheduled to work eight (8) hours or more. On these occasions, Defendants failed to pay Plaintiff and the other aggrieved employees reporting time pay consistent with IWC Wage Order No. 16-2001 and Labor Code §§ 200 and 200-204, 210, and 1198. The text and information about Labor Code sections 201-204 and 210 can be found later in this letter and are hereby incorporated by reference for brevity purposes.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(a), 226(e) and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a) (1), (2), (3), (5), and (9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,

not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,

The itemized wage statements issued to Plaintiff and the aggrieved employees did not include the include the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code sections 226(a)(3) and 226(a)(9). This includes, but is not limited to, listing the rates and units both as "0.00" such that Plaintiff and the other aggrieved employees could not determine from the wage statement alone such information:

Erickson Framing CA LLC 8350 Industrial Avenue Roseville, CA 95678-5946							
0402867 EMPLOYEE ID	AJAX I VELAZCO GARCIA EMPLOYEE NAME			1/24/2021 PERIOD BEG.	1/30/2021 PERIOD END.	139928 CHECK NO.	2/5/2021 DATE
EARNINGS	RATE	HRS/UNITS	CURRENT AMOUNT	YEAR TO DATE	DEDUCTIONS	CURRENT AMOUNT	YEAR TO DATE
Overtime Pay	0.00	0.00	0.00	168.00	CALF INC TAX	8.46	42.76
Regular Pay	14.00	40.00	560.00	2,308.50	CALF SDI	12.35	57.43
Regular Pay 2	0.00	0.00	42.59	189.31	DENTAL INSURANCE	4.44	22.20
Regular Pay 3	0.00	0.00	460.00	2,287.50	FED INC TAX	1.88	72.59
					PTCA/EMPLOYEE	63.80	296.68
					PICAMED/EMPLOYEE	14.92	69.38
					VOLUNTARY PLANS	12.39	61.95
					MEDICAL INSURANCE	29.19	145.95
PAY RATE	CURRENT EARNINGS	CURRENT DEDUCTIONS	NET PAY	Y.T.D.EARNINGS	Y.T.D. DEDUCTIONS	Y.T.D. NET PAY	
14.00	1,062.59	147.43	915.16	4,953.31	768.94	4,184.37	

In addition, due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a) (1), (2), (3), (5), and (9) with respect to Plaintiff and all aggrieved employees.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). See *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the "requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).").

In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and all aggrieved employees rest periods premiums including at the proper rates. Moreover, Plaintiff and all aggrieved employees also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants was confusing and inaccurate. In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above. Such conduct can permit the imposition of default PAGA penalties under Labor Code section 2699(f). See e.g. *Gola vs. University of San Francisco*, San Francisco County Superior Court Case No. CGC-18-565018.

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved employees on a weekly basis.

Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages and/or wages for all hours worked, overtime wages, meal period premiums, and rest period premiums Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above and Defendant’s failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As explained in detail above, Defendant failed to maintain accurate records of the total hours worked by Plaintiff and the other aggrieved employees. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

As described in detail above, Defendants failed to pay Plaintiff and other aggrieved employees whose employment concluded all wages owed, including but not limited to minimum wages and/or wages for all hours worked, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation.

Separate and independent of the foregoing, Defendant also failed to timely pay Plaintiff and the other aggrieved employees any wages whatsoever within the time constraints of Labor Code §§ 201-202 and instead paid employees days after their termination and/or resignation (if advance notice was provided) or more than 72 hours after their resignation if no advance notice was provided.

Thus, as a result of Defendant's faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendant without being paid all compensation owed in violation of Labor Code §§ 201, 202, and 203.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our client's intent to pursue potential civil class action lawsuit and/or representative action against Defendant that will also include a PAGA claim for penalties under Labor Code § 2699. If Defendant is interested in attempting to resolve this matter on a representative basis, please contact us or have any Counsel you choose to retain contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **March 18, 2021**.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON

Exhibit 2

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 610 ♦ LOS ANGELES, CA 90035 ♦ (424) 288-4568

April 16, 2021

Via Online Filing with the LWDA & by Certified Mail to Defendant

Erickson Framing CA LLC
250 N Beck Ave
Chandler, AZ 85226

Erickson Framing CA LLC
8350 Industrial Avenue
Roseville, CA 95678

Erickson Framing CA LLC/Capitol Corporate Services, Inc.
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814

Re: Ajax Velazco Garcia vs. Erickson Framing CA LLC. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as Erickson Framing CA LLC- California Labor Code §2699 Penalties – Amended PAGA Notice LWDA Case No. LWDA-CM-823291-21

Gentlepersons:

As you know, this firm represents Ajax Velazco Garcia (“Plaintiff” or “Mr. Garcia”) and a proposed group of current and former employees working for Defendant Erickson Framing CA LLC (“Defendant”) in California for violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 as well as IWC Wage Order No. 16-2001. This letter is to advise Defendant of additional claims being brought against it due to its willful failure to provide Plaintiff’s records in violation of Labor Code §§ 226 and 1198.5.

- (1) all non-exempt, hourly employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California at any point from March 2, 2020¹ and continuing into the present. (“Non-Exempt Aggrieved Employees”);
- (2) all employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California and who were paid in whole and/or in part on a piece rate basis at any point from March 2, 2020 and continuing into the present. (“Piece Rate Aggrieved Employees”);

¹ The first PAGA Notice was submitted on March 2, 2021. Since Defendant failed to timely produce Plaintiff’s records, Plaintiff is adding additional claims under PAGA based upon Defendant’s willful and conscious refusal to provide Plaintiff with his employment records.

- (3) all individuals who were employed by Erickson Framing CA, LLC or its predecessor or merged entities in California as a non-exempt hourly employee or non-exempt piece rate employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 2, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);
- (4) all individuals who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt hourly employee or non-exempt piece rate employee or other similar position March 2, 2020 and continuing into the present. (“Meal Period Aggrieved Employees”);
- (5) all individuals who were employed by Erickson Framing CA, LLC, or its predecessor, merged or related entities in California as a non-exempt hourly employee or non-exempt piece rate employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from March 2, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);
- (6) all employees who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities in California and who reported for work, but were furnished less than half of his/her usual or scheduled day’s work at any point from March 2, 2020 and continuing into the present. (“Reporting Time Pay Aggrieved Employees”);
- (7) all individuals who were employed by Erickson Framing CA, LLC or its predecessor, merged or related entities for one or more pay periods in California and whose employment concluded at any time between March 2, 2020 and continuing into the present; (“Late Payment Aggrieved Employee”);

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all aggrieved employees.² Specifically, Plaintiff contends that Defendant issued itemized wage statements to him and the other aggrieved employees that did not include the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code sections 226(a)(3) and 226(a)(9). Plaintiff further alleges that Defendant failed to include

² See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

April 16, 2021
Page 3 of 16

incentive pay when calculating and paying overtime and listed the time associated with incentive pay as "0.00" and the rates associated with incentive pay as "\$0.00." This includes, but is not limited to, listing the rates and units for both piece rate and incentive pay and hourly rates both as "0.00" such that Plaintiff and the other aggrieved employees could not determine from the wage statement alone such information:

Erickson Framing CA LLC 8350 Industrial Avenue Roseville, CA 95678-5946							
0402867 EMPLOYEE ID	AJAX I VELAZCO GARCIA EMPLOYEE NAME			1/24/2021 PERIOD BEG.	1/30/2021 PERIOD END.	139928 CHECK NO.	2/5/2021 DATE
EARNINGS	RATE	HRS/UNITS	CURRENT AMOUNT	YEAR TO DATE	DEDUCTIONS	CURRENT AMOUNT	YEAR TO DATE
Overtime Pay	0.00	0.00	0.00	168.00	CALF INC TAX	8.46	42.76
Regular Pay	14.00	40.00	560.00	2,308.50	CALF SDI	12.35	57.43
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Regular Pay 3	0.00	0.00	460.00	2,287.50	FED INC TAX	1.88	72.59
					PTCA/EMPLOYEE	63.80	296.68
					PICAMED/EMPLOYEE	14.92	69.38
					VOLUNTARY PLANS	12.39	61.95
					MEDICAL INSURANCE	29.19	145.95
PAY RATE		CURRENT EARNINGS	CURRENT DEDUCTIONS	NET PAY	Y.T.D. EARNINGS	Y.T.D. DEDUCTIONS	Y.T.D. NET PAY
14.00		1,062.59	147.43	915.16	4,953.31	768.94	4,184.37

In addition, Defendant also failed to authorize and permit employees to take lawful meal periods and/or rest period, failed to allow employees to take timely meal periods within the first five (5) hours, failed to permit employees to take a full thirty (30) minute meal period and instead only permitted them less time to eat, falsified time records to show that employees received a meal period or complete meal period when no such meal period occurred resulting in the auto-deduction of time and improper withholding of minimum wage and overtime wages, failed to timely pay wages during and after employment, failed to provide accurate itemized wage statements, failed to provide reporting time pay when the aggrieved employees were required to report, but were provided with less than half their usual or scheduled day's work, and failed to maintain accurate time records among other issues.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226 and 1198.5

Labor Code § 1198.5(a) provides that "every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Pursuant to Labor Code § 1198.5(b) requires the employer to "make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the

employer receives a written request.” “If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

Similarly, an employee may request a copy of their pay records within the meaning of Labor Code § 226(a) in accordance with Labor Code § 226(c). Under Labor Code § 226(c), “an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” Pursuant to Labor Code § 226(f) if an employer fails to comply with a request pursuant to Labor Code § 226(f), the employer must pay the employee a penalty of seven hundred fifty dollars.

When responding to a records request, Labor Code § 226 obligates an employer to provide either a duplicate of an employee’s itemized wage statements or “a computer-generated record that accurately shows all of the following information:

(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

In addition, Labor Code § 432 provides that “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

On March 2, 2021, Plaintiff submitted a request for records under Labor Code §§ 226, 432, and 1198.5 via Certified Mail (Nos. 7020 1810 0000 4230 5261 and 7020 1810 0000 4230 5254). **Exh A.** The USPS tracking records indicate that Defendant received the record request to its 2 addresses on March 8 and 9, 2021. Pursuant to Labor Code §§ 226, 432, 1198.5 and 6408(d) as well as his time records within the meaning of Section 7(A)(3) and (C) of the IWC Wage Order, Plaintiff’s pay records were due within 21 days of the receipt of his request and his personnel records within 30 days of receipt. In accordance with the mailbox rule, Defendants are presumed to have received a copy of the March 2, 2021 PAGA Notice and record request and the USPS records

confirm that they in fact did.³ However, Defendants did not timely produce Plaintiff's personnel file and or his pay records within the meaning of Labor Code section 226 or 1198.5 and in fact have never provided such records.

Plaintiff alleges that Defendant engaged in the same or similar conduct described above with respect the other aggrieved employees who submit record requests in an effort to conceal its unlawful practices, to avoid complying with California's record request laws, and/or as part of a regular and consistent policy and practice. As a result of the foregoing and notwithstanding the fact that Plaintiff also experienced many of the other Labor Code violations addressed herein, Plaintiff is an aggrieved employee under PAGA and possesses standing to pursue claims against Defendant for the claims identified in this notice. *See Huff vs. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745 (2018) (explaining that there is no typicality requirement in a PAGA action because "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.") (emphasis added).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 1194, 1197, 1198 and IWC Wage Order No. 16-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 16-2001 obligates employers to pay each employee minimum wages for all hours worked.

These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th at 324.

Similarly, Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a

³ Assuming *arguendo* Defendant tries to argue that it did not receive the initial PAGA Notice, it would not impact Plaintiff's standing to bring a PAGA case. In *Munoz v. Giumarra Vineyards Corp.*, No. 1:09-CV-0703 AWI JLT, 2015 U.S. Dist. LEXIS 122447, at *9 (E.D. Cal. Sep. 11, 2015), a former postal employee admitted to intercepting and signing for the PAGA notice. As the Court explained, service was still effective because PAGA only requires that a PAGA Notice be mailed and not actually received. *Id.* ("The statute only requires "written notice by certified mail" and does not make mention of actual receipt.").

day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to pay Plaintiff and all aggrieved employees for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime hours pursuant to IWC Wage Order No. 16-2001 and Labor Code § 510. Defendant’s rounded time entries for Plaintiff and the other aggrieved employees were also unlawful and non-neutral because Defendant failed to provide compensation for all hours worked well beyond 15 minutes and failed to round up in the employee’s favor due, including, but not limited to, its off-the-clock policies. As such, Defendant failed to pay Plaintiff wages for all hours worked (including overtime hours) and misclassified hours worked as regular hours as a result of its auto-deduction and unlawful time recording policies and procedures as discussed herein.

Defendant also engaged in a common policy and practice of arbitrarily recording Plaintiff and the other aggrieved employees’ work periods as ending at earlier times and then requiring them and/or suffering and permitting them to continue to work off-the-clock without compensation. For instance, Defendant would record Plaintiff and the other aggrieved employee’s work day as having ended when in fact Plaintiff and the other aggrieved employees’ worked until 4:00 pm. When Defendant instituted its “new” piece rate compensation policies and practices in 2020, Defendant failed to record the time associated with Plaintiff and the other aggrieved employee’s work periods were significantly longer and also included unrecorded and/or underreported (by the Company and its supervisors) time punches. Notably, Defendant knew that it was suffering and permitting and requiring Plaintiff and the other aggrieved employees to perform work off-the-clock and without compensation and/or sufficient compensation. Defendant is legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the California Supreme Court explained less than a week ago. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) (“It is the employer’s duty to maintain accurate time records” and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair

Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 16-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order No. 16-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 16-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); *see also Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.⁴ The California Supreme Court recently held in *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” In order to defeat this presumption, an employer must show not only that it advised employees “of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period.” *Id.* at *33 This presumption applies not only to missed meal periods, but also “to records showing short and delayed meal periods as well.” *Id.* at *34.

Moreover, an employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has

⁴ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); *accord Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13–0056–DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Defendant adopted an automatic deduction policy and practice whereby it automatically deducted thirty (30) minutes’ worth of an employee’s pay regardless of whether or not the employee took a meal period and/or the full amount of their meal period. As a result of Defendant’s policy and practice of automatically deducting thirty (30) minutes’ worth of pay regardless of whether or not the aggrieved employee took a meal period and/or the length of the meal period, Defendant regularly failed to authorize and permit Plaintiff and all aggrieved employees to take lawful thirty (30) minute uninterrupted meal periods, failed to accurately document whether or not employees received lawful meal periods and/or their length. Instead, Defendant’s provided no meal periods, late meal periods, and/or short meal periods to Plaintiff and the aggrieved employees. Defendant also did not provide did not provide a meal period premium when it failed to provide any meal period, a timely first meal period, and/or short meal periods in violation of Labor Code §§ 226.7 and 512.

Further, here, as in *Donohue*, Defendant engaged in a common pattern and practice of rounding meal punches in violation of Labor Code §§ 226.7 and 512. This includes, but is not limited, to falsifying that employees took thirty-minute meal periods when in fact such meal periods were not received and/or were often less than thirty (30) minutes in length.

Defendant also failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, and failed to authorize and permit them to take timely first meal periods. Defendant’s meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. Defendant’s understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

Defendants also failed to pay Plaintiff and the other meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

Similarly, IWC Wage Order No. 16-2001, prohibits an employer from “employ[ing] any

person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligate employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001. Unfortunately, Plaintiff and the other aggrieved employees were not compensated with one (1) hours’ worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001.

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order No. 5-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code §§ 226.7 and 512 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 16-2001

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001, Defendants failed to provide Plaintiff and all aggrieved employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. IWC Wage Order No. 16-2001, expressly requires employers to designate an area for rest periods that can include the employees' immediate work area. As such, under IWC Wage Order No. 16-2001 specifically requires employers, including Defendant, to not only "authorize and permit employees to take rest periods," but also to provide instructions about where they can be taken. Unfortunately, Plaintiff and the aggrieved employees were not authorized or permitted to take rest periods nor were they provided with instructions about rest periods could be taken as required by IWC Wage Order No. 16-2001.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 16-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE § 200 and 1198 BY FAILING TO PROVIDE REPORTING TIME PAY

IWC Wage Order No. 16-2001, § 5 provides that "[e]ach workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day's work, the employer shall pay him/her for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage."

Labor Code § 200 provides that "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Moreover, Labor Code § 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or

under conditions of labor prohibited by the order is unlawful.

On several occasions, Plaintiff and the other aggrieved employees were required to report to work and would stay for approximately two (2) hours and would be sent home for lack of work despite being scheduled to work eight (8) hours or more. On these occasions, Defendants failed to pay Plaintiff and the other aggrieved employees reporting time pay consistent with IWC Wage Order No. 16-2001 and Labor Code §§ 200 and 200-204, 210, and 1198. The text and information about Labor Code sections 201-204 and 210 can be found later in this letter and are hereby incorporated by reference for brevity purposes.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(a), 226(e) and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a) (1), (2), (3), (5), and (9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
- (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or

more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

- (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
- (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
- (iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,

The itemized wage statements issued to Plaintiff and the aggrieved employees did not include the include the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code sections 226(a)(3) and 226(a)(9). This includes, but is not limited to, listing the rates and units both as “0.00” such that Plaintiff and the other aggrieved employees could not determine from the wage statement alone such information:

Erickson Framing CA LLC 8350 Industrial Avenue Roseville, CA 95678-5946								
0402867 EMPLOYEE ID	AJAX I VELAZCO GARCIA EMPLOYEE NAME				1/24/2021 PERIOD REG.	1/30/2021 PERIOD END.	139928 CHECK NO.	2/5/2021 DATE
EARNINGS		RATE	HRS./UNITS	CURRENT AMOUNT	YEAR TO DATE	DEDUCTIONS	CURRENT AMOUNT	YEAR TO DATE
Overtime Pay	0.00	0.00		0.00	168.00	CALF INC TAX	8.46	42.76
Regular Pay	14.00	40.00		560.00	2,308.50	CALF SDI	12.35	57.43
Regular Pay 2	0.00	0.00		42.59	189.31	DENTAL INSURANCE	4.44	22.20
Regular Pay 3	0.00	0.00		460.00	2,287.50	FED INC TAX	1.88	72.59
						FICA/EMPLOYEE	63.80	296.68
						FICAMED/EMPLOYEE	14.92	69.38
						VOLUNTARY PLANS	12.39	61.95
						MEDICAL INSURANCE	29.19	145.95
PAY RATE		CURRENT EARNINGS		CURRENT DEDUCTIONS		NET PAY		Y.T.D. NET PAY
14.00		1,062.59		147.43		915.16		4,184.37

In addition, due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a) (1), (2),

(3), (5), and (9) with respect to Plaintiff and all aggrieved employees.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).”).

In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and all aggrieved employees rest periods premiums including at the proper rates. Moreover, Plaintiff and all aggrieved employees also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants was confusing and inaccurate. In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above. Such conduct can permit the imposition of default PAGA penalties under Labor Code section 2699(f). *See e.g. Gola vs. University of San Francisco*, San Francisco County Superior Court Case No. CGC-18-565018.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved employees on a weekly basis.

Due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages and/or wages for all hours worked, overtime wages, meal period premiums, and rest period premiums Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above and Defendant's failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep "payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments." An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As explained in detail above, Defendant failed to maintain accurate records of the total hours worked by Plaintiff and the other aggrieved employees. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

As described in detail above, Defendants failed to pay Plaintiff and other aggrieved

employees whose employment concluded all wages owed, including but not limited to minimum wages and/or wages for all hours worked, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation.

Separate and independent of the foregoing, Defendant also failed to timely pay Plaintiff and the other aggrieved employees any wages whatsoever within the time constraints of Labor Code §§ 201-202 and instead paid employees days after their termination and/or resignation (if advance notice was provided) or more than 72 hours after their resignation if no advance notice was provided.

Thus, as a result of Defendant's faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendant without being paid all compensation owed in violation of Labor Code §§ 201, 202, and 203.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our client's intent to pursue potential civil class action lawsuit and/or representative action against Defendant that will also include a PAGA claim for penalties under Labor Code § 2699.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: 
DAVID S. WINSTON

Certified Mail #: 7020 1810 0000 4330 2214
7020 1810 0000 4330 2283
7020 1810 0000 4330 2207

Exhibit A

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 610 ♦ LOS ANGELES, CA 90035 ♦ (424) 288-4568

March 2, 2021

Via Certified Mail

Erickson Framing CA LLC
250 N Beck Ave
Chandler, AZ 85226

Erickson Framing CA LLC
8350 Industrial Avenue
Roseville, CA 95678

Re: *Ajax Velazco Garcia's Records Request*

Dear Erickson Framing CA LLC:

My office represents Ajax Velazco Garcia ("Mr. Velazco Garcia"). Please direct all future correspondence regarding Mr. Velazco Garcia to my office and allow this letter to serve as Mr. Velazco Garcia's formal request pursuant to California Labor Code sections 226, 432, 1198.5 and 6408(d) and the applicable IWC Wage Order, that you produce the following documents to my office within the timeframes proscribed under California law:

- Mr. Velazco Garcia's personnel file, including any documents relating to his performance or any grievances concerning Mr. Velazco Garcia.
- Mr. Velazco Garcia's pay records within the meaning of Labor Code § 226(a).
- Mr. Velazco Garcia's time records.¹
- Documents related to the obtaining and holding of employment, including employment applications, purported arbitration agreements, and any other document signed in relation to obtaining or holding of employment.
- The Company's Injury and Illness Prevention Program ("IIPP") and COVID-19 Prevention Program ("CPP") and any records related to workplace hazards and/or

¹ Please be advised that IWC Wage Order No. 16-2001(7)(A)(3) and (C) require employers to maintain and make available upon reasonable request an employee's time records from the past three years. ("All required records shall be in the English language and in ink or other indelible form...for at least three years" and "shall be available for inspection by the employee upon reasonable request.").

exposures, including, but not limited to, exposures to COVID-19.² Note that it will be presumed that if the Company does not produce its IIPP or CPP that the Company has failed to promulgate these plans.

If Erickson Framing CA LLC fails to comply with Mr. Velazco Garcia's records request in accordance with California law, Mr. Velazco Garcia will be entitled to collect penalties in the amount of \$750 each under Labor Code sections 226(f) and 1198.5 (k) in addition to injunctive relief, attorneys' fees, and costs.

As Mr. Velazco Garcia has not filed a lawsuit as of the time this request was submitted, Erickson Framing CA LLC's obligation to provide the above-referenced documents will not be extinguished if she proceeds with the filing of a lawsuit during the pendency of this request. (*See Kuang Xuan Liu v. Win Woo Trading, LLC*, 2016 U.S. Dist. LEXIS 78121 (N.D. Cal. June 15, 2016) (holding that "[w]hile Plaintiff's right to obtain his file within 30 days ceases during the pendency of the litigation, Plaintiff's request was made before the lawsuit was filed.... Thus, the filing of the lawsuit does not automatically defeat this claim under California law.")).

CONCLUSION

We are willing to accept an electronic production of these records, if it is more convenient than providing a hard copy. Electronic productions can be made by email to david@employmentlitigators.com. Please do not hesitate to contact my office if you have any questions or concerns regarding the above.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: /s/ David. S. Winston
DAVID S. WINSTON
Attorney for Ajax Velazco Garcia

Certified Mail #: 7020 1810 0000 4330 5254
7020 1810 0000 4330 5261

² Such information must be provided upon request to an employee. *See e.g.* Labor Code section 6408, Title 8 of the California Code of Regulations, Section 3203 (T8 CCR 3203, and California Code of Regulations (CCR), Title 8, section 3205).

I, hereby authorize the release of any and all documents in your possession related to my employment to the Winston Law Group, P.C.

Pursuant to Labor Code §§ 226(b) and (c), 432, 1198.5 and 6408(d) and the applicable IWC Wage Order, I hereby request that a copy of my personnel records, including any documents signed by me relating to obtaining or holding employment, my pay records, my time records, and records of unsafe working conditions or hazards be released to the Winston Law Group, P.C.

DATE

AJAX VELAZCO GARCIA

Por la presente, yo autorizo la liberación de cualquier y todos los documentos en su posesión relacionado con mi empleo a Winston Law Group, P.C.

Conforme al Código Laboral §§ 226 (b) y (c), 432, 1198.5 y 6408 (d) y la Orden aplicable de Salarios IWC, yo solicito una copia de mis registros personales, incluyendo los documentos firmados por mí en relación con la obtención o retención de mi empleo, mis registros de pago, mis registros de tiempo, y registros de condiciones laborales inseguras o peligros sean liberados a Winston Law Group, P.C.

3/2/2021

FECHA

DocuSigned by:


AJAX VELAZCO GARCIA
B1A9FAB27C0A412

7020 1810 0000 4230 5254

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Chandler, AZ 85226

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Certified Mail Fee	\$5.60
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Extra Services & Fees (check box, add fee each)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$1.40
\$	
Total Postage and Fees	\$3.00
\$	

Sent To
ERICKSON FRAMING CA LLC
Street and Apt. No., or PO Box No.
250 N BECK AVE
City, State, ZIP+4[®]
CHANDLER, AZ 85226

0416083

Postmark Here

03/02/2021

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Tracking Number: 70201810000042305254

Your item was delivered to the front desk, reception area, or mail room at 12:58 pm on March 9, 2021 in CHANDLER, AZ 85226.

Delivered, Front Desk/Reception/Mail Room

March 9, 2021 at 12:58 pm
CHANDLER, AZ 85226

[Get Updates](#)

Text & Email Updates

Tracking History

March 9, 2021, 12:58 pm

Delivered, Front Desk/Reception/Mail Room
CHANDLER, AZ 85226

Your item was delivered to the front desk, reception area, or mail room at 12:58 pm on March 9, 2021 in CHANDLER, AZ 85226.

March 9, 2021, 9:52 am

Out for Delivery
CHANDLER, AZ 85226

March 9, 2021, 9:41 am

Arrived at Post Office
CHANDLER, AZ 85224

March 5, 2021

In Transit to Next Facility

March 2, 2021, 5:09 pm

Departed Post Office
BEVERLY HILLS, CA 90210

March 2, 2021, 4:13 pm

USPS in possession of item
BEVERLY HILLS, CA 90210

Product Information

[See Less](#)

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Roseville, CA 95678

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Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage	\$1.40
Total Postage and Fees	\$5.00

OFFICIAL USE

0410
03

Postmark
Here

03/02/2021

Sent To
ERICKSON FRAMING CA LLC
Street and Apt. No., or PO Box No.
8350 INDUSTRIAL AVENUE
City, State, ZIP+4[®]
ROSEVILLE, CA 95678

Tracking Number: 70201810000042305261

Your item was delivered to an individual at the address at 9:43 am on March 8, 2021 in ROSEVILLE, CA 95678.

Delivered, Left with Individual

March 8, 2021 at 9:43 am
ROSEVILLE, CA 95678

Get Updates

Text & Email Updates

Tracking History

March 8, 2021, 9:43 am

Delivered, Left with Individual
ROSEVILLE, CA 95678

Your item was delivered to an individual at the address at 9:43 am on March 8, 2021 in ROSEVILLE, CA 95678.

March 6, 2021, 9:38 am

Delivery Attempted - No Access to Delivery Location
ROSEVILLE, CA 95678

March 6, 2021, 6:10 am

Out for Delivery
ROSEVILLE, CA 95678

March 6, 2021, 4:02 am

Arrived at Post Office
ROSEVILLE, CA 95661

March 5, 2021, 8:35 am

Arrived at USPS Regional Destination Facility
SACRAMENTO CA DISTRIBUTION CENTER

March 4, 2021

In Transit to Next Facility

March 2, 2021, 5:09 pm
Departed Post Office
BEVERLY HILLS, CA 90210

March 2, 2021, 4:13 pm
USPS in possession of item
BEVERLY HILLS, CA 90210

Product Information

[See Less](#)

Exhibit 3



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 5, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Donald Garner v. Erickson Framing CA LLC, et al.*

Dear PAGA Administrator:

This office represents Donald Garner in connection with his claims under the California Labor Code. Mr. Garner was an employee of ERICKSON FRAMING CA LLC, ERICKSON BUILDING COMPONENTS LLC, and/or ERICKSON FRAMING OPERATIONS LLC. For the purpose of this letter, Mr. Garner collectively refers to these entities as "ERICKSON."

The employers may be contacted directly at the addresses below:

ERICKSON FRAMING CA LLC
250 N BECK AVE
CHANDLER AZ 85226

ERICKSON BUILDING COMPONENTS LLC
250 N BECK AVE
CHANDLER AZ 85226

ERICKSON FRAMING OPERATIONS LLC
250 N BECK AVE
CHANDLER AZ 85226

Mr. Garner intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Garner seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ERICKSON as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ERICKSON employed Mr. Garner as an hourly paid, non-exempt employee from approximately April 2019 to November 2019, and again from January 2020 to March 2020. Mr. Garner worked for ERICKSON as a Carpenter. During his employment, Mr. Garner typically worked eight (8) hours or more per day, and five (5) days per week. At the time Mr. Garner's employment with ERICKSON

ended, he earned approximately \$17.00 per hour. His job duties included, without limitation, constructing housing frames, bracketing walls, and performing other carpentry work.

ERICKSON committed one or more of the following Labor Code violations against Mr. Garner, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

ERICKSON’s Company-Wide and Uniform Payroll and HR Practices

ERICKSON FRAMING CA LLC, ERICKSON BUILDING COMPONENTS LLC, and ERICKSON FRAMING OPERATIONS LLC are Delaware limited liability companies. Together, ERICKSON is a provider and installer of prefabricated building components in the Western United States. Upon information and belief, ERICKSON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Chandler, Arizona, for all non-exempt, hourly paid employees working for ERICKSON in California, including Mr. Garner and other aggrieved employees. At all relevant times, ERICKSON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Garner and other aggrieved employees, regardless of its location or position.

Upon information and belief, ERICKSON maintains a centralized Payroll department at its corporate headquarters in Chandler, Arizona, which processes payroll for all non-exempt, hourly paid employees working for ERICKSON in California, including Mr. Garner and other aggrieved employees. Further, ERICKSON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Garner and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, ERICKSON utilized the same methods and formulas when calculating wages due to Mr. Garner and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Garner’s experience and counsel’s review of those records currently available relating to Mr. Garner’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Garner reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

ERICKSON willfully failed to pay all overtime wages owed to Mr. Garner and other aggrieved employees. During the relevant time period, Mr. Garner and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, ERICKSON had a policy and/or practice of discouraging and impeding Mr. Garner and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. In doing so, ERICKSON failed to implement a timekeeping system at its project sites and does not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to accurately track and record their hours worked. Instead, on information and belief, ERICKSON's policy and/or practice is to simply pay employees, including Mr. Garner and other aggrieved employees, for the hours they are scheduled to work by requiring Mr. Garner and other aggrieved employees to report only their scheduled shift start and end times on a weekly timesheet, and failing to track their actual hours worked. Because ERICKSON both failed to provide Mr. Garner and other aggrieved employees with any mechanism to record their actual hours worked and/or prohibited them from recording their actual hours worked, Mr. Garner and other aggrieved employees were not paid for all hours worked.

Moreover, ERICKSON did not have a procedure in place to track the start and stop times of meal periods at all, much less to allow employees to report a short, missed, or interrupted meal period. The weekly "timesheet" that Mr. Garner and other aggrieved employees were required to complete did not include a way to record meal period start and stop times. Instead, on information and belief, ERICKSON implemented a company-wide policy and practice of automatically deducting 30-minute meal periods from Mr. Garner's and other aggrieved employees' time records. As a result of this policy, ERICKSON deducted 30-minute meal periods from Mr. Garner's and other aggrieved employees' time records when they worked five (5) hours or more in one day, even when meal periods were missed, short, and/or interrupted. Because ERICKSON failed to implement any sort of timekeeping system for meal periods and automatically deducted 30-minute meal periods from employees' timesheets, Mr. Garner and other aggrieved employees were not paid for all hours worked.

Second, during the relevant period, ERICKSON had a company-wide "on-call" policy, whereby it scheduled Mr. Garner and other aggrieved employees to work "on-call," or on standby. These "on-call" shifts worked to ERICKSON's benefit and to the detriment of Mr. Garner and other aggrieved employees. By utilizing "on-call" shifts, ERICKSON received the benefit of being able to maximize revenue by having a standby workforce they could choose to utilize or not, depending on construction deadlines, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work.

When scheduled for an "on-call" or standby shift, Mr. Garner and other aggrieved employees were required to wait for ERICKSON's management to call them or to call ERICKSON's management before their scheduled standby shift to see if they were required to come in and work. Mr. Garner and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective project sites on short notice and work their standby shift. When scheduled to be "on-call" for a standby shift, Mr. Garner and other aggrieved employees were controlled by ERICKSON because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Garner refrained from making plans

altogether while “on-call” for a standby shift because he knew that he had to drop whatever he was doing at a moment’s notice if he was instructed to work his standby shift. ERICKSON did not pay Mr. Garner and other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at its project sites on days they ultimately were not called in. ERICKSON also did not compensate Mr. Garner and other aggrieved employees for the time they spent calling in to see if they were needed.

Third, ERICKSON required Mr. Garner and other aggrieved employees to report to distant project sites and assignments when there were not enough employees available, but did not compensate them for their time spent traveling to and from these locations. For example, although Mr. Garner was generally assigned to work in the greater Sacramento area, ERICKSON sometimes required him to drive his personal vehicle from his home in Foresthill, California, to project sites in Chico, California. Thus, ERICKSON required Mr. Garner and other aggrieved employees to work off-the-clock traveling to and from project sites outside of their assigned areas, but failed to compensate them for this travel time.

Fourth, ERICKSON had and continue to have, a company-wide policy and/or practice of understaffing its project sites while assigning stringent construction deadlines, which led to Mr. Garner and other aggrieved employees working off-the-clock before and after their shifts and during their meal periods. For example, to meet company metrics, ERICKSON required Mr. Garner and other aggrieved employees to erect the frames of residential projects within 3-4 days. ERICKSON’s uniform policies and/or practices of understaffing and assigning such deadlines led to a failure to provide Mr. Garner and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result, Mr. Garner and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Garner was required to work through part or all of his meal periods in order to meet ERICKSON’s deadlines, time for which he was not paid.

ERICKSON knew or should have known that as a result of these company-wide practices and/or policies, Mr. Garner and other aggrieved employees were performing their assigned duties before and after their shifts and during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Garner and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, ERICKSON did not pay Mr. Garner and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ERICKSON paid Mr. Garner and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ERICKSON failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Garner and other aggrieved employees worked overtime and received these other forms of pay, ERICKSON failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, ERICKSON paid Mr. Garner and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or differential pay, which were listed on Mr. Garner’s and other aggrieved employees’ wage statements as “Regular Pay 2.” On information and belief, “Regular Pay 2” denoted differential pay for non-regular shifts, such as special projects or assignments in distant

locations. During pay periods that Mr. Garner and other aggrieved employees were paid overtime wages, ERICKSON failed to incorporate the incentive pay, nondiscretionary bonuses, and/or differential pay into Mr. Garner's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ERICKSON paid Mr. Garner and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ERICKSON's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Garner and other aggrieved employees on a company-wide basis.

Therefore, Mr. Garner and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Mr. Garner and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in the applicable wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

As stated above, ERICKSON had a company-wide policy and/or practice of paying Mr. Garner and other aggrieved employees only for their scheduled shifts, rather than their actual hours worked, because ERICKSON had no timekeeping system in place at its project sites to track hours worked outside scheduled shifts or during meal periods. Furthermore, as stated, ERICKSON automatically deducted 30-minute meal periods from employees' timesheets. Moreover, as stated, ERICKSON systematically, and on a company-wide basis, required Mr. Garner and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Garner and other aggrieved employees were subject to ERICKSON's control during an "on-call" shift, ERICKSON did not pay Mr. Garner and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. Additionally, Mr. Garner and other aggrieved employees were required to travel to distant project sites but were not paid for this time. As also stated above, due to ERICKSON's company-wide policies and/or practices of understaffing and implementing stringent construction deadlines, and subsequent lack of meal period coverage, Mr. Garner and other aggrieved employees were required to work off-the-clock before and after their scheduled shifts and during meal periods.

Moreover, ERICKSON maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, ERICKSON was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. ERICKSON gave other aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of ERICKSON. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing ERICKSON's mandatory drug

tests and/or physical examinations. However, ERICKSON did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, ERICKSON did not pay for all hours worked by Mr. Garner and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ERICKSON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, ERICKSON regularly failed to pay at least minimum wages to Mr. Garner and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Garner and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, ERICKSON did not have a procedure in place to track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period. The weekly "timesheet" that Mr. Garner and other aggrieved employees were required to complete did not include a place to record meal period start and stop times. ERICKSON also did not have a time clock or other timekeeping system at its various project sites, and thus failed to provide Mr. Garner and other aggrieved employees with any mechanism for recording meal periods. Instead, on information and belief, ERICKSON automatically deducted 30-minute meal periods from Mr. Garner's and other aggrieved employees' time records.

Moreover, as stated, ERICKSON had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads and construction deadlines. Additionally, on information and belief, ERICKSON maintained and implemented, on a company-wide basis, a non-compliant meal period schedule that prevented Mr. Garner and other aggrieved employees from taking timely, compliant meal periods. For example, when scheduled to begin work at 7:00 a.m., Mr. Garner's meal periods were scheduled for 1:00 p.m., which was actually his sixth hour of work.

ERICKSON's practices and policies prevented Mr. Garner and other aggrieved employees from taking all compliant meal periods to which they were entitled. For example, during his employment, Mr. Garner worked through meal periods and had meal periods interrupted in order to ensure that he and other employees were finishing their tasks and meeting ERICKSON's construction deadlines.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Garner and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

ERICKSON knew or should have known that as a result of its policies and practices, that Mr. Garner and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. ERICKSON further knew or should have known that it did not pay Mr. Garner and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, ERICKSON engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Garner and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that ERICKSON did pay Mr. Garner and other aggrieved employees premium pay for missed, late, and interrupted meal periods, ERICKSON did not pay Mr. Garner and other aggrieved employees at the correct rate of pay for premiums because ERICKSON systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ERICKSON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Garner and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the

obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, ERICKSON regularly failed to authorize and permit Mr. Garner and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ERICKSON’s company-wide practices, including understaffing and implementing strict deadlines, prevented Mr. Garner and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. ERICKSON also failed to schedule rest periods, which, coupled with ERICKSON’s failure to provide adequate rest period coverage, further led to Mr. Garner and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, ERICKSON maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Garner and other aggrieved employees remain on the project sites’ premises during their rest periods. Because Mr. Garner and other aggrieved employees were restricted from leaving ERICKSON’s project sites during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, ERICKSON effectively maintained control over Mr. Garner and other aggrieved employees during rest periods.

As a result, Mr. Garner and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Garner missed rest periods and had rest periods cut short in order to meet ERICKSON’s construction deadlines.

ERICKSON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that ERICKSON did pay Mr. Garner and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ERICKSON did not pay Mr. Garner and other aggrieved employees at the correct rate of pay for premiums because ERICKSON failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ERICKSON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Garner and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ERICKSON has not provided Mr. Garner and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per

employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ERICKSON has knowingly and intentionally provided Mr. Garner and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ERICKSON issued uniform wage statements to Mr. Garner and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, ERICKSON violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because ERICKSON did not record the time Mr. Garner and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ERICKSON did not list the correct amount of gross wages and net wages earned by Mr. Garner and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ERICKSON failed to accurately list the total number of hours worked by Mr. Garner and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because ERICKSON did not calculate Mr. Garner's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, ERICKSON did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, ERICKSON also failed to list the correct amount of net wages in violation of section 226(a)(5). ERICKSON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, ERICKSON issued uniform wage statements to Mr. Garner and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Garner's and other aggrieved employees' wage statements incorrectly list the employer's address as "8350 Industrial Avenue, Roseville, CA 95678-5946," but, according to the California Secretary of State's website, "ERICKSON FRAMING CA LLC" is listed at a different address, "250 N. Beck Ave., Chandler, AZ 85226." *See example paystub below.*

Erickson Framing CA LLC 8350 Industrial Avenue Roseville, CA 95678-5946							
EMPLOYEE ID	DONALD K GARNER			3/8/2020	3/14/2020	122716	3/20/2020
	EMPLOYEE NAME			PERIOD BEG.	PERIOD END.	CHECK NO.	DATE
EARNINGS		RATE	HRS./UNITS	CURRENT AMOUNT	YEAR TO DATE	DEDUCTIONS	
Regular Pay		17.00	40.00	680.00	5,389.00		
Regular Pay 2		0.00	0.00	80.00	366.00		
						CALF INC TAX	8.49
						CALF SDI	7.60
						FED INC TAX	46.45
						FICA/EMPLOYEE	47.12
						FICAMED/EMPLOYEE	11.02
							83.46

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ERICKSON willfully failed to maintain accurate payroll records for Mr. Garner and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ERICKSON failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Garner and other aggrieved employees, in violation of section 1198. As stated, ERICKSON engaged in a company-wide practice and/or policy of falsifying Mr. Garner’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and kept no records of meal start and end times altogether. Furthermore, in light of ERICKSON’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, ERICKSON kept no records of meal start and end times for second meal periods.

Because ERICKSON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Garner and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Garner and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Garner and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ERICKSON failed to pay Mr. Garner and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Garner and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

ERICKSON willfully failed to pay Mr. Garner and other aggrieved employees who are no longer employed by ERICKSON all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving ERICKSON's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Garner and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, ERICKSON required Mr. Garner and other aggrieved employees to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a condition of receiving their paychecks. For example, prior to receiving his final paycheck, ERICKSON required Mr. Garner to verify that he had received all of his rest periods and to sign a box on his timesheet that states, “I certify that the hours below are true and correct.” ERICKSON compelled Mr. Garner and other aggrieved employees to sign these false verifications when they, in fact, were not provided all meal or rest periods and/or had not been able to accurately record all of the hours they had worked.

ERICKSON’s policy and practice of requiring Mr. Garner and other aggrieved employees to release their claims for meal or rest period violations and/or uncompensated hours worked, as a condition to receiving their wages, is in violation of California Labor Code section 206.5. Mr. Garner and other aggrieved employees are therefore entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, ERICKSON implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, ERICKSON had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, ERICKSON was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, ERICKSON did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. ERICKSON’s policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8 – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, ERICKSON violated California Labor Code section 1198 and California Code of Regulations, Title 8, because ERICKSON failed to pay Mr. Garner and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

As described above, ERICKSON failed to pay Mr. Garner and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting “on-call” and awaiting instructions on whether to show up, but ultimately were not called. ERICKSON did not pay Mr. Garner and other aggrieved employees for at least half of their scheduled day’s work when they were subject to ERICKSON’s on-call policy and were not called or told not to come into work. For example, Plaintiff waited at home during his scheduled “on-call” shifts as required by ERICKSON’s on-call policy, but sometimes was not called or told that ERICKSON did not need him to work. ERICKSON did not pay Mr. Garner and other aggrieved employees for at least half of their scheduled standby time or the required minimum reporting time pay.

Also, ERICKSON had a company-wide practice of sending Mr. Garner and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Garner and other aggrieved employees for half of their scheduled shift. For example, Mr. Garner would report to work, but would be sent home immediately by ERICKSON’s management because there was no available work for him to perform. Although Mr. Garner and other aggrieved employees would report to work based on the schedule that ERICKSON provided to them, ERICKSON would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Mr. Garner and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, ERICKSON had a company-wide policy of requiring Mr. Garner and other aggrieved employees to travel to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Garner and other aggrieved employees were assigned to projects in specific geographic areas within the greater Sacramento region, but were sometimes required to work on projects in other areas. Specifically, as stated, although Mr. Garner primarily worked in the greater Sacramento region near his home, he was occasionally required to drive further to work in Chico, California, but was never reimbursed for any of his mileage. Additionally, as stated, ERICKSON had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, ERICKSON was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. ERICKSON gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of ERICKSON. Although ERICKSON required other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, ERICKSON failed to reimburse them for their travel expenses.

Second, during the relevant time period, ERICKSON, on a company-wide basis, required Mr. Garner and other aggrieved employees to purchase tools and equipment that were necessary for the completion of their work-related duties. For example, ERICKSON provided Mr. Garner a list of branded construction tools, and Mr. Garner was required to purchase each tool on this list as a condition of working for ERICKSON. In addition, ERICKSON, on a company-wide basis, mandated that Mr. Garner and other aggrieved employees purchase special safety shoes, such as steel-toed boots, which they were required to wear while at work. Mr. Garner and other aggrieved employees purchased steel-toed boots to wear at ERICKSON's project sites, but were not reimbursed for these costs. Thus, ERICKSON failed to provide tools and equipment to Mr. Garner and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Garner and other aggrieved employees for these costs.

Third, during the relevant time period, ERICKSON had a company-wide policy of requiring Mr. Garner and other aggrieved employees to utilize their own personal cellular phones to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Garner and other aggrieved employees were required to use their personal cellular phones to fulfill their work-related responsibilities, such as calling ERICKSON's management when scheduled to work "on-call" shifts. Although ERICKSON required Mr. Garner and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, ERICKSON failed to reimburse them for this cost.

ERICKSON could have provided Mr. Garner and other aggrieved employees with the actual tools required for use on the job, including company vehicles, tools and equipment, and company phones. Or, ERICKSON could have reimbursed employees for their mileage, travel, tools and equipment, and cellular phone usage. Instead, ERICKSON passed these operating costs off onto Mr. Garner and other aggrieved employees. At all relevant times, Mr. Garner and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, ERICKSON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code

section 2802. Mr. Garner and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

ERICKSON, on a company-wide basis, failed to provide Mr. Garner and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that ERICKSON required employees to wear certain personal protective equipment, including steel-toed boots, ERICKSON failed to provide such reasonably necessary equipment to Mr. Garner and other aggrieved employees to keep them safe.

ERICKSON's failure to provide Mr. Garner and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Garner and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." ERICKSON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Garner's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Garner seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Garner, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against ERICKSON for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Garner seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: ERICKSON FRAMING CA LLC (via U.S. Certified Mail); ERICKSON BUILDING COMPONENTS LLC (via U.S. Certified Mail); ERICKSON FRAMING OPERATIONS LLC (via U.S. Certified Mail)



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- Print your name and address on the reverse so that we can return the card to you.
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250 N BECK AVE
CHANDLER AZ 85226



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2. Article Number (Transfer from service label)

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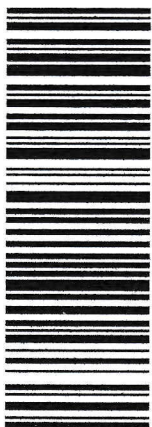
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ERICKSON FRAMING CA LLC

Street and Apt. No., 250 N BECK AVE

City, State, ZIP+4® CHANDLER AZ 85226

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Garner v. Erickson
Framing CA LLC

one
LAW APC
1000
Park East, Ste 1000
Chandler, CA 90067

CERTIFIED MAIL®



7020 1290 0001 8879 1661

one
LAW APC
y Park East, Ste 1000
, CA 90067

ERICKSON BUILDING COMPONENTS LLC
250 N BECK AVE
CHANDLER AZ 85226



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ERICKSON BUILDING COMPONENTS LLC
250 N BECK AVE
CHANDLER AZ 85226



9590 9402 1512 5362 2713 22

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1661

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ d Mail
- ☐ d Mail Restricted Delivery (\$50)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

ERICKSON BUILDING COMPONENTS LLC

Street and Apt. No. 250 N BECK AVE

City, State, ZIP+4® CHANDLER AZ 85226

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Garner v. Erickson
Building Components
LLC

7020 1290 0001 8879 1661

CERTIFIED MAIL



7020 1290 0001 8879 0022

tone

LAW APC

1000 Park East, Ste 1000
S, CA 90067

ERICKSON FRAMING OPERATIONS LLC
250 N BECK AVE
CHANDLER AZ 85226



SENDER: COMPLETE THIS SECTION

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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ERICKSON FRAMING OPERATIONS LLC
250 N BECK AVE
CHANDLER AZ 85226



9590 9402 1512 5362 2713 39

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0022

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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OFFICIAL USE

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LLC

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