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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 J. JESUS MAGANA VEGA, an individual,
12 on behalf of the State of California, as a
13 private attorney general,

14 PLAINTIFF,

15 v.

16 CEN CAL PLASTERING, INC., a California
17 Corporation; and DOES 1 to 50, inclusive,

18 DEFENDANTS.
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FILED
SUPERIOR COURT - STOCKTON

2021 JUN 15 PM 4:17

BRANDON E. RILEY, CLERK

BY USA VEGA
DEPUTY CLERK

CASE NO.

STK-CV-UOE-2021-S440

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 204, 210, 226, 226.3, 226.7, 510, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 16-2001

BY FAX

1. Plaintiff J. JESUS MAGANA VEGA, 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 CEN CAL PLASTERING, INC. (“Defendant” or “CEN CAL”) and the Doe Defendants and each of them, as follows:

I.

INTRODUCTION

2. 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 employees who were employed by CEN CAL PLASTERING, INC. or its predecessor, merged or related entities in California as an employee at any point from April 29, 2020 and continuing into the present. (“All Non-Exempt Aggrieved Employees”);¹
- (2) all non-exempt, hourly employees who were employed by CEN CAL PLASTERING, INC. or its predecessor, merged or related entities in California as an employee at any point from April 29, 2020 and continuing into the present. (“Non-Exempt Hourly Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

- (3) all individuals who were employed by CEN CAL PLASTERING, INC. or its predecessor or merged entities in California as a non-exempt, hourly 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 April 29, 2020 and continuing into the present. ("Overtime Aggrieved Employees");
- (4) all individuals who were employed by CEN CAL PLASTERING, INC., or its predecessor, merged or related entities in California as a non-exempt hourly

¹ Defendant CEN CAL despite knowing of the existence of this action and Plaintiff's record request willfully failed to provide Plaintiff with his personnel file within the meaning of Labor Code section 1198.5, copies of documents that he signed related to his employment, and his pay records within the meaning of Labor Code section 226. Defendant CEN CAL should not be able to benefit from its inequitable conduct and failure to comply with California law. As such, Plaintiff reserves his right to bring related unpled claims under the Relation Back Doctrine—if he deems it prudent after receiving the documents Defendant CEN CAL was legally required to provide—for all non-exempt employees who worked for Defendant in California at any point between January 14, 2016 and the present.

1 employee, or other similar position, who worked one or more shifts of more than four
2 (4) hours in length or major fraction thereof from April 29, 2020 and continuing into
3 the present. (“Rest Period Aggrieved Employee”);

- 4 (5) all individuals who were employed by CEN CAL PLASTERING, INC. as a non-
5 exempt, hourly employee who worked in the field (aka away from the main facility)
6 during at least part of one or more pay periods from April 29, 2020 and continuing
7 into the present (“Field Non-Exempt Aggrieved Employees”)

8 3. The groups referenced in paragraph 2 may also all collectively be referred to
9 herein as aggrieved employees, other aggrieved employees, and/or all aggrieved employees where
10 appropriate.

11 4. Plaintiff, on behalf of the State of California as a private attorney general brings
12 claims for alleged Labor Code violations committed against himself and all aggrieved employees
13 presently or formerly employed by Defendants during the liability period pursuant to Labor Code
14 § 2698, *et seq.* seeking penalties for Defendants violations of California Labor Code §§ 204, 210,
15 226, 226.3, 226.7, 510, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No.
16 16-2001. Based upon the allegations herein, Plaintiff and all aggrieved employees are aggrieved
17 employees within the meaning of Labor Code § 2698, *et seq.*

18 5. Plaintiff and all aggrieved employees worked for Defendant at one or more of its
19 locations in California or in the field in California. Plaintiff is a current employee of Defendant.

20 II.

21 FACTUAL BACKGROUND

22 6. Plaintiff and the aggrieved employees were at all times relevant hereto were
23 employed by CEN CAL and the Doe Defendants. Plaintiff and the aggrieved employees were at
24 all times pertinent hereto, non-exempt employees for the purposes of overtime, meal periods, and
25 rest periods. Plaintiff and all aggrieved employees were employed by Defendants within the
26 statutory PAGA period.

27 7. Upon information and belief, Plaintiff and the other aggrieved employees were
28 covered by California Industrial Welfare Commission Occupational Wage Order No. 16-2001.

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

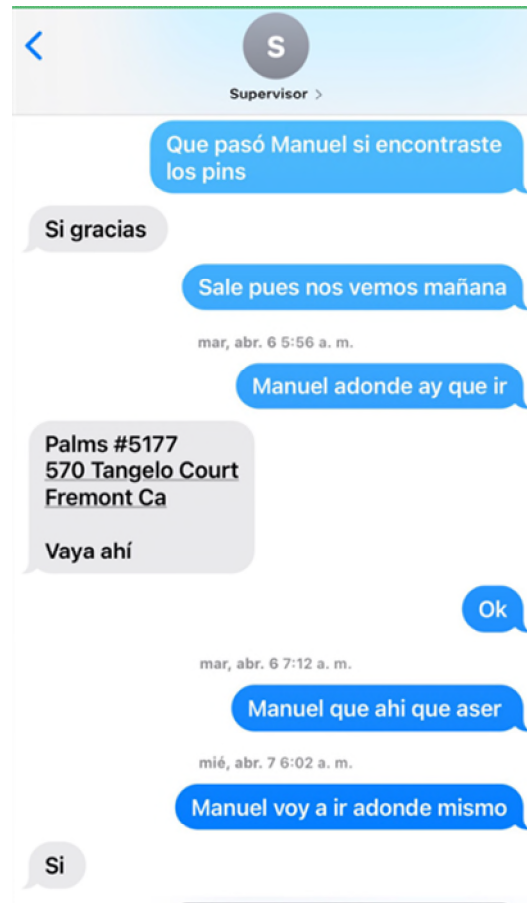
7 9. Labor Code § 510 requires an employer to compensate an employee who works
8 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
9 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
10 rate of pay for an employee.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

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

20 11. Similarly, Labor Code §2802 provides that “[a]n employer shall indemnify his or
21 her employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
23 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
24 believed them to be unlawful.”

25 12. At all times relevant hereto, Defendants required and/or expected Plaintiff and all
26 aggrieved employees to review and follow directions provided to them afterhours related to job
27 sites and conditions on their own personal electronic devices and to ask for work related
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instructions including where to report and the location of job sites—including, but not necessarily limited to their cell phones in the normal course of their job duties:



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13. At all times relevant hereto, it was expected and known that employees would incur expenses and be suffered or permitted to expend time on reviewing and acting in accordance with the text messages sent to Plaintiff and the other aggrieved employees with job site and assignment information. Plaintiff and the other aggrieved employees were required and expected/suffered and permitted to communicate with Defendants' supervisory employees about their work location on a daily basis. As such, Plaintiff and the other aggrieved employees were required and/or expected to use their personal cell phones in the discharge of their job duties in order to obtain work schedules and assignments. Defendants' conduct in requiring Plaintiff and the other aggrieved employees to use their cell phones to obtain their schedules and/or job assignments caused them to incur losses as a direct consequence of their duties.

1 14. Although Plaintiff and the other aggrieved employees were regularly required to
2 and/or ordered/directed to use their own personal electronic devices—including, but not limited to
3 cell phones—for work purposes, Plaintiff and the other aggrieved employees were not provided
4 with any reimbursement for the use of their personal electronic devices. California law prohibits
5 an employer from failing to reimburse employees from losses incurred through the use of their
6 own electronic devices even if the use would not cause the employee to exceed their data limit.
7 *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) (“We hold that when
8 employees must use their personal cell phones for work-related calls, Labor Code section 2802
9 requires the employer to reimburse them. Whether the employees have cell phone plans with
10 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
11 cell phone bills.”).

12 15. At all times relevant hereto, since Plaintiff and many of the aggrieved employees
13 had already worked shifts of eight (8) hours at the time that they were required to work while off-
14 the-clock, included overtime hours and/or the failure to record such hours led hours worked later
15 in the day to be misclassified as regular hours instead of overtime hours. As a result, in addition
16 to failing to pay Plaintiff and the other aggrieved employees for the time associated with such
17 communications, Defendants also underpaid Plaintiff and the other aggrieved employees for
18 overtime hours worked.

19 16. Through Defendants’ policy and practice of not paying Plaintiff and the other
20 aggrieved employees for the time expended reviewing text messages with job assignment
21 information and/or other job-related communications within the discharge of their duties,
22 Defendants violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802.

23 17. Moreover, Defendants either can and/or should have recorded the time spent by its
24 non-exempt hourly employees on the use of the and compensated Plaintiff and the aggrieved
25 employees for such time. *See also Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294,
26 at *45 (Feb. 25, 2021) (“It is the employer's duty to maintain accurate time records.”). As such,
27 Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated
28

1 Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802 with respect to Plaintiff and all
2 aggrieved employees.

3 18. Separate and independent of the foregoing, at all times relevant hereto Defendants
4 also maintained a policy and practice whereby it refused to pay Plaintiff for any time worked in
5 excess of eight (8) hours in a day and/or forty (40) hours in a week and instead only paid
6 employees for eight (8) hours of work a day. Defendants regularly and consistently advised
7 Plaintiff and the other aggrieved employees not to record such time because they would not be
8 paid for any work in excess of eight (8) hours in a day and/or forty (40) hours a week. This policy
9 and practice violated Code §§ 510, 558, 1194, 1197, 1197.1, 1198.

10 19. In addition, Defendants also maintained a common policy and practice whereby it
11 failed to provide Plaintiff and the other aggrieved employees for any expense reimbursement
12 associated with the use of their personal vehicles in the discharge of their duties. Defendants
13 regularly and consistently required Plaintiff, the Field Aggrieved Employees, and other aggrieved
14 employees to drive to its client's sites in their personal vehicles and failed to provide any
15 reimbursement whatsoever and/or insufficient reimbursement. This includes, but is not limited to,
16 days where Plaintiff and the other aggrieved employees were required to travel from one work
17 site to another worksite, days where they had to report to Defendants' facilities before travelling
18 to a job site, and days where Plaintiff and the other aggrieved employees were required to travel
19 directly to job sites. Although not limited to such instances, Defendants also often required
20 Plaintiff and the other aggrieved employees to drive to a second job site when they finished their
21 work at a particular job site early and did not provide any mileage, gas, or other vehicle related
22 reimbursement for the expenses incurred in driving between job sites.

23 20. Based upon the foregoing, Defendants violated Labor Code § 510 with respect to
24 Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved
25 employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under
26 Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes
27 to be violated...any provision regulating hours and days of work in any order of the Industrial
28 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,

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

9 21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
10 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
11 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
12 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
13 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
14 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
15 period for which the employee is underpaid regardless of whether the initial violation is
16 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
17 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
18 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover
19 liquidated damages for violations of Labor Code § 1197.1.

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

24 23. IWC Wage Order No. 16-2001, expressly requires employers to designate an area
25 for rest periods that can include the employees’ immediate work area. As such, IWC Wage Order
26 No. 16-2001 requires employers, including Defendants, to not only “authorize and permit
27 employees to take rest periods,” but also to provide instructions about where they can be taken.
28

1 24. At all times relevant hereto, Plaintiff and the aggrieved employees were not
2 authorized or permitted to take rest periods nor were they provided with instructions about rest
3 periods or where they could be taken as required by IWC Wage Order No. 16-2001. Instead,
4 Defendants failed both to advise Plaintiff and the other aggrieved employees of their right to rest
5 periods, how many rest periods they were entitled to, and where they could take such rest periods
6 as required by IWC Wage Order No. 16-2001.

7 25. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 16-2001, Defendants
8 failed to provide Plaintiff and all aggrieved employees with rest periods of not less than ten (10)
9 minutes for every major fraction of four (4) hours worked during the statutory period applicable
10 to their claims.

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

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

- 27 (1) gross wages earned;
28 (2) total hours worked by the employee;
 (3) the number of piece-rate units earned and any applicable piece rate if the

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

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

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

23 30. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
25 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
26 for each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As
28 explained in detail above, Defendant 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 Defendant's violations of Labor
Code § 226(a).

31. 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 paid Plaintiff and all aggrieved employees on a weekly basis.

32. Under Labor Code § 204(d), an employer who pays employees on a weekly basis must pay all wages owed “not more than seven calendar days following the close of the payroll period.”

33. Although Defendant paid Plaintiff and the other aggrieved employees on a weekly basis, Defendant regularly failed to pay Plaintiff and the aggrieved employees within seven (7) days of the close of the payroll period. Instead, Defendant often paid Plaintiff and the other aggrieved employees eight (8) or more days following the close of the payroll period. This includes numerous instances where Defendant paid Plaintiff and the aggrieved employees none of their wages until at least eight (8) days after the close of the payroll period. For instance, for the pay period of March 12, 2021 to March 18, 2021, Defendant did not pay Plaintiff or the other aggrieved employees until March 26, 2021—which is eight (8) days after the close of payroll period. Based upon information and belief, Defendant engaged in the same common pattern and practice for each and every pay period worked by Plaintiff and the aggrieved employees during at all times relevant hereto. Below is one of Plaintiff’s wage statements demonstrating Defendant’s unlawful policy and practice with respect to Plaintiff and all aggrieved employees:

CEN CAL PLASTERING, INC.
15300 MCKINLEY AVE
LATHROP, CA 95330

Barrett Business Services, Inc.
1111 I Street Suite 107
Modesto, CA 95354
FEIN: [REDACTED] TELE: 209/576-0322

Employee VEG30 J. Jesus Magana Vega
Status / Allow MU / Ms
Payment Date 03-26-2021
Emp Type Hourly
Period 03-12-2021 - 03-18-2021
Check # 0009841663
XXX-XX-8099
912971

Description	Amount	Y-T-D	Taxable
NET ZERO	0.00	408.34	
MEDICARE	9.28	43.67	3008.00
SOC SECURITY	39.68	186.50	3008.00
CA DISABILITY	7.68	36.10	3008.00

Location	Description	Rate	Hours/Units	Amount	HRSWRK
	Regular Hourly	20.0000	32.00	640.00	32.00
	MULTIFIELD				

Total Gross Pay / Hours Worked 640.00 32.00

PTO	TYPE	Start Balance	Earned	Taken	Avail	Direct Deposit	Type	Account	Amount	Gross Wages	Current	YTD
										640.00	640.00	3,008.00
										640.00	640.00	3,008.00
										583.36	583.36	2,333.44

Review this pay stub to ensure its accuracy. Notify your employer of any errors, or changes to name, address, or tax withholding options.

1 34. Further, based upon information and belief Defendant also failed to designate and
2 maintain paydays in advance as required by Labor Code § 204(a). The lack of designated pay
3 days caused Plaintiff and the other aggrieved employees to receive their pay even later than eight
4 (8) days after the close of the payroll period.

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

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

22 37. Plaintiff fully and completely exhausted his administrative remedies under PAGA
23 prior to proceeding with this action. Plaintiff filed his PAGA Notice online with the Labor
24 Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants
25 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by
26 Labor Code § 2698 *et seq.* **Exh. A.** As required by PAGA, Plaintiff submitted the \$75.00 filing
27 fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will
28 have been received by Plaintiff from the LWDA evidencing its intention to investigate within

1 sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore,
2 entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

3 **III.**

4 **JURISDICTION AND VENUE**

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

11 39. This Court has personal jurisdiction over Defendants because Defendants have
12 caused injuries in the County of San Joaquin including at its location in Lathrop California
13 through their acts, and by their violation of the California Labor Code and California state
14 common law.

15 40. Venue as to each Defendants is proper in this judicial district, pursuant to Code of
16 Civil Procedure § 395. Defendants operates within California and does business within San
17 Joaquin County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
18 all “employees” within the State of California and San Joaquin County.

19 **IV.**

20 **PARTIES**

21 **A. PLAINTIFF**

22 41. Plaintiff J. JESUS MAGANA VEGA is a resident of California and at all times
23 pertinent hereto worked for Defendants and was harmed by activities in San Joaquin County.

24 42. Plaintiff and all aggrieved employees are, and at all times pertinent hereto, have
25 been classified as employees by Defendants. Defendants hires employees to work in California.

26 43. Upon information and belief, Plaintiff and all aggrieved employees are covered by
27 California Industrial Welfare Commission Occupational Wage Orders No 16-2001.
28

44. Plaintiff represents the state of California in prosecuting claims against Defendants on behalf of several groups of employees defined as:

- (1) all non-exempt employees who were employed by CEN CAL PLASTERING, INC. or its predecessor, merged or related entities in California as an employee at any point from April 29, 2020 and continuing into the present. (“All Non-Exempt Aggrieved Employees”);²
- (2) all non-exempt, hourly employees who were employed by CEN CAL PLASTERING, INC. or its predecessor, merged or related entities in California as an employee at any point from April 29, 2020 and continuing into the present. (“Non-Exempt Hourly Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

- (3) all individuals who were employed by CEN CAL PLASTERING, INC. or its predecessor or merged entities in California as a non-exempt, hourly 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 April 29, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);
- (4) all individuals who were employed by CEN CAL PLASTERING, INC., or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from April 29, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);
- (5) all individuals who were employed by CEN CAL PLASTERING, INC. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) during at least part of one or more pay periods from April 29, 2020 and continuing into the present (“Field Non-Exempt Aggrieved Employees”)

² Defendant CEN CAL despite knowing of the existence of this action and Plaintiff's record request willfully failed to provide Plaintiff with his personnel file within the meaning of Labor Code section 1198.5, copies of documents that he signed related to his employment, and his pay records within the meaning of Labor Code section 226. Defendant CEN CAL should not be able to benefit from its inequitable conduct and failure to comply with California law. As such, Plaintiff reserves his right to bring related unpled claims under the Relation Back Doctrine—if he deems it prudent after receiving the documents Defendant CEN CAL was legally required to provide—for all non-exempt employees who worked for Defendant in California at any point between January 14, 2016 and the present.

1 45. The groups referenced in paragraph 44 may also all collectively be referred to
2 herein as aggrieved employees, other aggrieved employees, and/or all aggrieved employees where
3 appropriate.

4 **B. DEFENDANTS**

5 46. Defendant CEN CAL PLASTERING, INC. is believed to be a California
6 Corporation operating within the State of California including within San Joaquin County.
7 Defendant's principal place of business is believed to be 15300 S McKinley Ave, Lathrop CA
8 95330.

9 47. Based upon information and belief, CEN CAL and the Doe Defendants operate as
10 joint employers and/or as a single enterprise or alter egos of each other. Throughout his
11 employment, Plaintiff and the aggrieved employees were regularly and consistently subject to the
12 common policies and practices utilized by Defendants.

13 48. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
15 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
17 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
18 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become
20 known. Plaintiff further alleges that the Doe Defendants include California residents including
21 individuals who could be brought into the action under Labor Code § 558.1.

22 49. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
25 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
26 employer and/or joint employer of Plaintiff and the other aggrieved employees.

27 ///

28 ///

V.

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS
OF LABOR CODE §§ 204, 210, 226, 226.3, 226.7, 510, 558, 1174, 1174.5, 1194, 1197, 1198,
and 2802 and IWC Wage Order No. 16-2001**

50. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

51. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 204, 210, 226, 226.3, 226.7, 510, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 16-2001.

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

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

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

53. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get separate PAGA penalties for interrupted meal periods because interrupted meal periods violated Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of PAGA penalties to award); *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) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be

1 ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for different
2 Labor Code violations.”); accord *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)
3 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-
4 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal.
5 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
6 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

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

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

26 56. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
27 causes to be violated...any provision regulating hours and days of work in any order of the
28 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial

1 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
2 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
3 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
4 period for which the employee was underpaid..." Based upon the above factual allegations
5 related to overtime and rest period violations, Plaintiff and the aggrieved employees are entitled
6 to recover civil penalties under Labor Code § 558 and not any underpaid wages. *ZB, N.A. v. Sup.*
7 *Ct. 8 Cal.5th 175 (2019).*

8 **RELIEF REQUESTED**

9 **WHEREFORE**, Plaintiff prays for the following relief:

- 10 1. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
11 employees because of Defendants' violation of Labor Code §§ 204, 210, 226, 226.3, 226.7, 510,
12 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 16-2001;
13 2. An award providing for payment of costs of suit;
14 3. An award of attorneys' fees; and
15 4. Such other and further relief as this Court may deem proper and just.

16 Dated: June 15, 2021

WINSTON LAW GROUP, P.C.

17
18
19 By: 

20 DAVID S. WINSTON

21 Attorney for Plaintiff J. Jesus Magana Vega and the
22 aggrieved employees
23
24
25
26
27
28

Exhibit A

WINSTON LAW GROUP, P.C.

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

April 29, 2021

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

CEN CAL PLASTERING, INC.
15300 S McKinley Ave
Lathrop, CA 95330

CEN CAL PLASTERING, INC.
15300 S McKinley Ave
French Camp, CA 95231

Re: J. Jesus Magana Vega vs. CEN CAL PLASTERING, INC. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as CEN CAL PLASTERING, INC.- California Labor Code §2699 Penalties

Gentlepersons:

This firm represents J. Jesus Magana Vega (“Plaintiff” or “Mr. Vega”) and a proposed group of current and former employees working for Defendant CEN CAL PLASTERING, INC. (“Defendant” or “CEN CAL”) in California for violations of California Labor Code §§ 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 16-2001.

- (1) all non-exempt employees who were employed by CEN CAL PLASTERING, INC. or its predecessor, merged or related entities in California as an employee at any point from one (1) year prior to the date of this letter and continuing into the present. (“All Non-Exempt Aggrieved Employees”);
- (2) all non-exempt, hourly employees who were employed by CEN CAL PLASTERING, INC. or its predecessor, merged or related entities in California as an employee at any point from one (1) year prior to the date of this letter and continuing into the present. (“Non-Exempt Hourly Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and two (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

- (3) all individuals who were employed by CEN CAL PLASTERING, INC. or its predecessor or merged entities in California as a non-exempt, hourly 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 CEN CAL PLASTERING, INC., or its predecessor, merged or related entities in California as a non-exempt hourly 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”);
- (5) all individuals who were employed by CEN CAL PLASTERING, INC. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) during at least part of one or more pay periods from one (1) year prior to the date of this letter and continuing into the present (“Field Non-Exempt Aggrieved Employees”);

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 failed to pay all of the aggrieved employees any wages whatsoever until more than seven days after the close of the payroll period in violation of Labor Code § 204, required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform work off-the-clock without compensation (including overtime hours), failed to reimburse Plaintiff and the other aggrieved employees for expenses associated with the use of their cell phone in the discharge of their duties and mileage, failed to authorize and permit lawful rest periods where employees were relieved of all duties and allowed to leave the premises, and failed to provide accurate itemized wage statements.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 1194, 1197, 1198, and 2802

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.

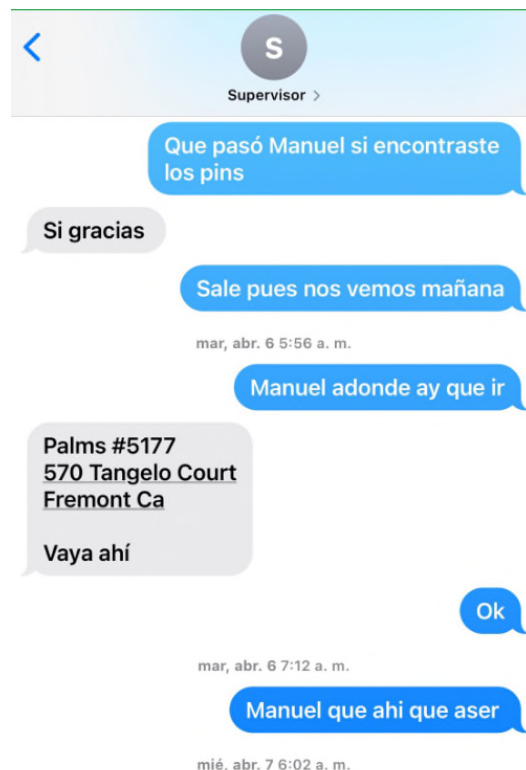
¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355,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

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.”

Similarly, Labor Code §2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Defendant required and/or expected Plaintiff and all aggrieved employees to review and follow directions provided to them afterhours related to job sites and conditions on their own personal electronic devices and to ask for work related instructions including where to report and the location of job sites—including, but not necessarily limited to their cell phones in the normal course of their job duties:



It was expected and known that employees would incur expenses and be suffered or permitted to expend time on reviewing and acting in accordance with the text messages sent to Plaintiff and the other aggrieved employees with job site and assignment information. Plaintiff and the other aggrieved employees were required and expected/suffered and permitted to communicate with Defendant's supervisory employees about their work location on a daily basis. As such, Plaintiff and the other aggrieved employees were required and/or expected to use their personal cell phones in the discharge of their job duties in order to obtain work schedules and assignments. Defendant's conduct in requiring Plaintiff and the other aggrieved employees to use their cell phones to obtain their schedules and/or job assignments caused them to incur losses as a direct consequence of their duties.

Although Plaintiff and the other aggrieved employees were regularly required to and/or ordered/directed to use their own personal electronic devices—including, but not limited to cell phones—for work purposes, Plaintiff and the other aggrieved employees were not provided with any reimbursement for the use of their personal electronic devices. California law prohibits an employer from failing to reimburse employees from losses incurred through the use of their own electronic devices even if the use would not cause the employee to exceed their data limit. See *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

Moreover, even assuming *arguendo* Plaintiff and the other aggrieved employees were not required to use their cell phone—which they indisputably were—Defendant also suffered and permitted Plaintiff and the other aggrieved employees to perform work while reviewing and acting in accordance with the instructions they received on a frequent basis via text message. *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). Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, included overtime hours and/or the failure to record such hours led hours worked later in the day to be misclassified as regular hours instead of overtime hours. As a result, in addition to failing to pay Plaintiff and the other aggrieved employees for the time associated with such communications, Defendant also underpaid Plaintiff and the other aggrieved employees for overtime hours worked.

Through Defendant's policy and practice of not paying Plaintiff and the other aggrieved employees for the time expended reviewing text messages with job assignment information and/or other job-related communications within the discharge of their duties, Defendant violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802. Moreover, as set forth in *Troester*, Defendant either can and/or should have recorded the time spent by its non-exempt hourly employees on the use of the and compensated Plaintiff and the aggrieved employees for such time. *See also 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."). As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802 with respect to Plaintiff and all aggrieved employees.

Separate and independent of the foregoing, Defendant also maintained a policy and practice whereby it refused to pay Plaintiff for any time worked in excess of eight (8) hours in a day and/or forty (40) hours in a week and instead only paid employees for eight (8) hours of work a day. Defendant regularly and consistently advised Plaintiff and the other aggrieved employees not to record such time because they would not be paid for any work in excess of eight (8) hours in a day and/or forty (40) hours a week. This policy and practice violated Code §§ 510, 558, 1194, 1197, 1197.1, 1198.

In addition, Defendant also maintained a common policy and practice whereby it failed to provide Plaintiff and the other aggrieved employees for any expense reimbursement associated with the use of their personal vehicles in the discharge of their duties. Defendant regularly and consistently required Plaintiff, the Field Aggrieved Employees, and other aggrieved employees to drive to its client's sites in their personal vehicles and failed to provide any reimbursement whatsoever and/or insufficient reimbursement. This includes, but is not limited to, days where Plaintiff and the other aggrieved employees were required to travel from one work site to another worksite, days where they had to report to Defendant's facilities before travelling to a job site, and days where Plaintiff and the other aggrieved employees were required to travel directly to job sites. Although not limited to such instances, Defendant also often required Plaintiff and the other aggrieved employees to drive to a second job site when they finished their work at a particular job site early and did not provide any mileage, gas, or other vehicle related reimbursement for the expenses incurred in driving between job sites.

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.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

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, Defendant 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, IWC Wage Order No. 16-2001 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 or where they could be taken as required by IWC Wage Order No. 16-2001. Instead, Defendant failed both to advise Plaintiff and the other aggrieved employees of their right to rest periods, how many rest periods they were entitled to, and where they could take such rest periods 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 § 226 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. 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...

Due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, and rest period premiums, the wage statements issued by Defendant 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 Defendant has violated Labor Code §226(a)(1), (2), (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).").

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, Defendant 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 Defendant's 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 paid Plaintiff and all aggrieved employees on a weekly basis. Under Labor Code § 204(d), an employer who pays employees on a weekly basis must pay all wages owed "not more than seven calendar days following the close of the payroll period."

Although Defendant paid Plaintiff and the other aggrieved employees on a weekly basis, Defendant regularly failed to pay Plaintiff and the aggrieved employees within seven (7) days of the close of the payroll period. Instead, Defendant often paid Plaintiff and the other aggrieved employees eight (8) or more days following the close of the payroll period. This includes numerous instances where Defendant paid Plaintiff and the aggrieved employees none of their wages until at

April 29, 2021
Page 9 of 10

least eight (8) days after the close of the payroll period. For instance, for the pay period of March 12, 2021 to March 18, 2021, Defendant did not pay Plaintiff or the other aggrieved employees until March 26, 2021—which is eight (8) days after the close of payroll period. Based upon information and belief, Defendant engaged in the same common pattern and practice for each and every pay period worked by Plaintiff and the aggrieved employees during at all times relevant hereto. Below is one of Plaintiff's wage statements demonstrating Defendant's unlawful policy and practice with respect to Plaintiff and all aggrieved employees:

CEN CAL PLASTERING, INC. 15300 MCKINLEY AVE LATHROP, CA 95330					Barrett Business Services, Inc. 1111 I Street Suite 107 Modesto, CA 95354 TELE: 209/576-0322																																									
Employee	VEG30 J. Jesus Magana Vega				XXX-XX-8899	912971																																								
Status / Allow	MU / Ma	Emp Type	Hourly	Check #	0000841663																																									
Payment Date	03-26-2021	Period	03-12-2021 - 03-18-2021																																											
<table border="1"><thead><tr><th>Location</th><th>Description</th><th>Rate</th><th>Hours/Units</th><th>Amount</th><th>HRSWRK</th></tr></thead><tbody><tr><td></td><td>Regular Hourly</td><td>20.0000</td><td>32.00</td><td>640.00</td><td>32.00</td></tr><tr><td></td><td>MAUSFIELD</td><td></td><td></td><td></td><td></td></tr></tbody></table>							Location	Description	Rate	Hours/Units	Amount	HRSWRK		Regular Hourly	20.0000	32.00	640.00	32.00		MAUSFIELD					<table border="1"><thead><tr><th>Description</th><th>Amount</th><th>Y-T-D</th><th>Taxable</th></tr></thead><tbody><tr><td>NET ZERO</td><td>0.00</td><td>408.34</td><td></td></tr><tr><td>MEDICARE</td><td>9.28</td><td>43.62</td><td>3008.00</td></tr><tr><td>SOC SECURITY</td><td>39.68</td><td>186.50</td><td>3008.00</td></tr><tr><td>CA DISABILITY</td><td>7.68</td><td>36.10</td><td>3008.00</td></tr></tbody></table>		Description	Amount	Y-T-D	Taxable	NET ZERO	0.00	408.34		MEDICARE	9.28	43.62	3008.00	SOC SECURITY	39.68	186.50	3008.00	CA DISABILITY	7.68	36.10	3008.00
Location	Description	Rate	Hours/Units	Amount	HRSWRK																																									
	Regular Hourly	20.0000	32.00	640.00	32.00																																									
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CA DISABILITY	7.68	36.10	3008.00																																											
Total Gross Pay / Hours Worked					640.00	32.00																																								
PTO	Type	Start Balance	Earned	Taken	Avail	Direct Deposit	Type	ACCOUNT	AMOUNT	Gross Wages	Current	YTD																																		
										640.00	640.00	3,008.00																																		
										640.00	640.00	3,008.00																																		
										583.36	583.36	2,333.44																																		

Review this pay stub to ensure its accuracy. Notify your employer of any errors, or changes to name, address, or tax withholding options.

Further, based upon information and belief Defendant also failed to designate and maintain paydays in advance as required by Labor Code § 204(a). The lack of designated pay days caused Plaintiff and the other aggrieved employees to receive their pay even later than eight (8) days after the close of the payroll period.

Separate and independent of the foregoing, due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages and/or wages for all hours worked, overtime wages, 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 all wages owed within seven (7) days of the close of the payroll

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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 previously explained, Defendant failed to maintain accurate records of the total hours worked by Plaintiff and the aggrieved employees or of the time associated with reviewing the text messages that Defendant sent to Plaintiff and the other aggrieved employees while off-the-clock on a regular and consistent basis. Thus, Defendant violated Labor Code §§ 1174 and 1174.5.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a civil class action lawsuit and 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 **May 21, 2021**.

Very truly yours,

WINSTON LAW GROUP, P.C.

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