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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

CARLOS GONZALEZ, individually and on
behalf of all similarly aggrieved employees,

Plaintiff,

v.

M.C. BUILDER, CORP., a California
limited liability company; ERNESTO
CASTO, an individual; and DOES 1 through
25,

Defendants.

CASE NO. CVPS2106544

**FIRST AMENDED COMPLAINT FOR
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET
SEQ.***

**1. VIOLATION OF LABOR CODE §§ 2698,
ET SEQ. (“PAGA”)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff CARLOS GONZALEZ (“Plaintiff”), on behalf of himself and all
other aggrieved employees, and hereby brings this First Amended Representative Action Complaint
against Defendants M.C. BUILDER, CORP., ERNESTO CASTO and DOES 1 through 25, inclusive
(collectively, “Defendants”), and on information and belief alleges as follows:

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

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1 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
2 employment practices, wrongs, injuries and damages complained of herein.

3 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 mentioned herein, Defendants were and are the employers of Plaintiff and the other aggrieved
5 employees.

6 8. At all times herein mentioned, each of said Defendants participated in the doing of
7 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
8 Defendants, and each of them, were the agents, servants, and employees of each and every one of the
9 other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were
10 acting within the course and scope of said agency and employment. Defendants, and each of them,
11 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions
12 complained of herein.

13 9. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
15 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
16 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
17 aggrieved employees.

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19 **REPRESENTATIVE ACTION FACTUAL ALLEGATIONS**

20 10. Plaintiff worked for Defendants from in or around March 2020 to in or around
21 November 2020, and April 6, 2021 and April 16, 2021. As part of their job duties, Plaintiff and other
22 similarly aggrieved employees worked for Defendants for the construction of drywall, stucco, and
23 other interior and exterior renovations of customer's properties.

24 11. Defendants failed to compensate Mr. Gonzalez and similarly aggrieved employees for
25 all hours of work performed, including but not limited to Defendants' requirement and unlawful
26 policy that Mr. Gonzalez and all similarly aggrieved employees forfeit the first week's wages.

27 12. Defendants engaged in a pattern, policy and practice of requiring Mr. Gonzalez and
28 similarly aggrieved employees to forfeit the first week's wages by creating an unlawful policy

1 known to all employees as the “first week is worked for free.” This unlawful policy resulted in the
2 forfeiture of wages by Mr. Gonzalez and similarly aggrieved employees.

3 13. Defendants also falsified the timesheets by Defendants’ managerial employees, by
4 filling up Mr. Gonzalez and similarly aggrieved employees’ time cards to avoid paying wages and
5 providing timely meal and rest periods

6 14. Plaintiff and other similarly aggrieved employees were not allowed to take meal and
7 rest breaks. Whenever Plaintiff and other similarly aggrieved employees requested a meal or a rest
8 break, Defendants would instruct Plaintiff and similarly aggrieved employees to take breaks after
9 their work was done, and would routinely interrupt breaks by ordering Plaintiff and similarly
10 aggrieved employees to immediately engage in work-related tasks. There is no policy for taking
11 breaks.

12 15. Plaintiff and similarly aggrieved employees were not compensated for work done
13 during lunch periods.

14 16. Defendants failed to reimburse Mr. Gonzalez and similarly aggrieved employees for
15 business expenses, including the uniform required by Defendants of white pants and white shirt; and
16 the necessary supplies required by Defendants, including buckets, paint rollers, a putty knife, blades,
17 knives, a hand masker, and paint screen.

18 17. Additionally, Defendants failed to reimburse Plaintiffs for the mileage driven in their
19 personal vehicles from jobsite to jobsite.

20 18. Defendants’ policy of not reimbursing the necessary work-related expenses for
21 purchasing the uniform, supplies, and mileage to Mr. Gonzalez and similarly aggrieved employees is
22 in violation of Labor Code §§ 2802 and 2804.

23 19. Defendants have engaged in, and continue to engage in, unfair business practices in
24 California by practicing, employing and utilizing the employment practices and policies outlined
25 above.

26 20. Defendants’ utilization of such unfair business practices constitutes unfair
27 competition and provides an unfair advantage over Defendants’ competitors. Defendants’ utilization
28 of such unfair business practices deprived Plaintiffs of the general minimum working standards and

1 entitlements due to them under California law and the Industrial Welfare Commission Wage Order
2 as described herein.

3 21. At all times relevant hereto, Plaintiffs were not exempt pursuant to Labor Code §515,
4 including because:

5 a. Plaintiffs' duties and responsibilities did not involve the management of the
6 enterprise in which they were employed or of a customarily recognized department or subdivision
7 thereof;

8 b. Plaintiffs were not licensed or certified by the State of California nor were
9 they primarily engaged in the practice of one of the following recognized professions: law,
10 medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, nor were they
11 primarily engaged in an occupation commonly recognized as a learned or artistic profession as such
12 terms are defined by Wage Order 5;

13 c. Plaintiffs' duties and responsibilities did not involve either the performance of
14 office or non-manual work directly related to management policies or general business operations
15 of their employer or their employer's customers, or the performance of functions in the
16 administration of a school system, or educational establishment or institution, or of a department or
17 subdivision thereof, in work directly related to the academic instruction or training carried on
18 therein;

19 d. Plaintiffs did not have the authority to hire or fire other employees, nor were
20 Plaintiffs' suggestions and recommendations as to the advancement and promotion or any other
21 change of status of other employees given any weight;

22 e. Plaintiffs did not customarily and regularly exercise discretion and
23 independent judgment in performing their work duties;

24 f. Plaintiffs did not perform under only general supervision work along
25 specialized or technical lines requiring special training, experience, or knowledge;

26 g. Plaintiffs did not perform under only general supervision special assignments
27 and tasks; and
28

1 h. Plaintiffs did not spend more than one-half of their work time engaged in
2 exempt work.

3 22. Defendants have engaged in, and continue to engage in, unfair business practices in
4 California by practicing, employing and utilizing the employment practices and policies outlined
5 above.

6 23. Defendants' utilization of such unfair business practices constitutes unfair
7 competition and provides an unfair advantage over Defendants' competitors. Defendants' utilization
8 of such unfair business practices deprives Plaintiffs of the general minimum working standards and
9 entitlements due them under California law and the Industrial Welfare Commission Wage Order as
10 described herein.

11 24. As a direct result of the violations herein alleged, Plaintiffs have suffered, and
12 continue to suffer, substantial losses related to the use and enjoyment of wages, lost interest on such
13 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their
14 obligations under state law, all to their respective damage in amounts according to proof at the time
15 of trial.

16 25. As a result of Defendants' failure to pay all rest period and meal break premium
17 wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to
18 Plaintiff and other similarly aggrieved employees.

19 26. As a result of Defendants' failure to pay all meal and rest period premium wages,
20 Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff
21 and aggrieved employees, and failed to timely pay Plaintiff and other similarly aggrieved employees
22 all wages owed them at the time of separation from their respective employments.

23 27. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
24 employees, as defined by Labor Code § 2699(c), including all individuals who are currently
25 employed, or formerly have been employed, as non-exempt employees of Defendants from on or
26 around April 26, 2020 to the present.

1 28. On April 26, 2021, Plaintiff sent a notice of filing the Private Attorney General Act
2 (“PAGA”) claim to Labor Workforce and Development Agency (“LWDA”) pursuant to California
3 Labor Code §§ 2698, *et seq.*, and paid \$75 to LWDA as a fee for filing the PAGA notice.

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5 **FIRST CAUSE OF ACTION**
6 **PRIVATE ATTORNEYS GENERAL ACT**
7 **(AGAINST ALL DEFENDANTS)**

8 29. Plaintiff incorporates by reference and re-alleges as if fully stated herein all previous
9 paragraphs.

10 30. Defendants have committed several Labor Code violations against Plaintiff and
11 aggrieved employees.

12 31. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor
13 Code sections enumerated in Labor Code section 2699.5.

14 32. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et*
15 *seq.*, and acting on behalf of himself and other aggrieved employees, brings this representative
16 action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees,
17 and the State of California according to proof pursuant to Labor Code § 2699(a) including, but not
18 limited to: \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
19 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
20 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each
21 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
22 employee per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for which
24 no civil penalty is specifically provided, based on the following Labor Code violations:

25 a. Defendants violated Industrial Welfare Commission Order No. 16 and Labor
26 Code §§ 200, 226, 500, 510, 1194, 1197 and 1198 by failing to pay all hours
27 worked;

28 b. Defendants violated Labor Code §§ 221-224 by unlawful forfeiture of

1 Plaintiff and other similarly aggrieved employees' wages;

2 c. Defendants violated Labor Code §§ 226.7, 512, 558 and 1198 by failing to
3 provide Plaintiffs with uninterrupted meal periods;

4 d. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse
5 Plaintiffs for the cost of their uniforms, necessary supplies as well as mileage
6 driven in their personal vehicles from jobsite to jobsite;

7 e. Defendants violated Labor Code § 226 by failing to provide Plaintiff and other
8 similarly aggrieved employees with accurate and compliant itemized wage
9 statements; and

10 f. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final
11 wages due, including, but not limited to all hours worked including wages
12 forfeited, meal period premiums and business expenses, to Mr. Gonzalez and
13 similarly aggrieved employees upon their separation of employment.

14 33. On April 26, 2021, Plaintiff sent a notice of his intent to file a PAGA claim for civil
15 penalties to the LWDA pursuant to the California Labor Code § 2698, *et seq.*, with respect to the
16 violations of the California Labor Code identified in Paragraph 21 (a)-(g). Now that sixty-five days
17 have passed from the date Plaintiff notified Defendants and the LWDA of these violations, Plaintiff
18 has exhausted his administrative requirements for bringing a claim under the Private Attorneys
19 General Act with respect to these violations.

20 34. Plaintiff was compelled to retain the services of counsel to file this court action to
21 protect his interests and the interests of other aggrieved employees, and to assess and collect the
22 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
23 he is entitled to receive under California Labor Code § 2699.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699(a)
6 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to
8 Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
9 withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
10 to Labor Code § 226.3 per employee per pay period; and/or (3) \$100.00 for each initial violation and
11 \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor
12 Code for which no civil penalty is specifically provided;

13 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
14 2699, and Code of Civil Procedure § 1021.5; and

15 3. For such other and further relief that the Court may deem just and proper.
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17 DATED: March 31, 2023

LOYR, APC

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19
20 By: _____

21 Young W. Ryu, Esq.
22 Joshua Park, Esq.
23 Kee Seok Mah, Esq.

24 Attorneys for Plaintiff Carlos Gonzalez
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JURY DEMAND

Plaintiff, on behalf of himself and others aggrieved employees, demands a trial by jury for himself and other aggrieved employees on all claims so triable.

DATED: March 31, 2023

LOYR, APC



By: _____

Young W. Ryu, Esq.

Joshua Park, Esq.

Kee Seok Mah, Esq.

Attorneys for Plaintiff Carlos Gonzalez

PROOF OF SERVICE

I am over 18 years old and not a party to this action. My business address is 1055 West 7th Street, Suite 2290, Los Angeles, California 90017.

On June 7, 2023, I served the following documents on the interested party as follows:

**1. FIRST AMENDED COMPLAINT FOR ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA
LABOR CODE §§ 2698 ET SEQ.**

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SLOVAK BARON EMPEY MURPHY & PINKEY LLP

1800 E. Tahquitz Canyon Way

Palm Springs, California 92262

Attorneys for Defendants M.C. Builder, Corp. and Ernest Casto (erroneously sued as Ernesto Casto)

[X] BY ELECTRONIC SERVICE:

My electronic service address is martha.gutierrez@loywr.com. Per the parties' agreement, through their respective counsel, to accept electronic service and pursuant to California Code of Civil Procedure section 1010.6, I served the foregoing document on the interested party at the electronic service addresses (e-mail addresses) listed above and did not receive Notice of Failure

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 7, 2023, in Los Angeles, California.


Martha Gutierrez